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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION  
14

15 KYTCH, INC.,  
16 Plaintiff,  
17 v.  
18 MCDONALD'S CORPORATION,  
19 Defendant.  
20

Case No. 23-cv-01998-TSH

**MCDONALD'S CORPORATION'S  
ANSWER TO KYTCH, INC.'S  
COMPLAINT**

**DEMAND FOR JURY TRIAL**

Dept: Courtroom E, 15th Floor  
Judge: Honorable Thomas S. Hixson

**ANSWER**

Defendant McDonald's Corporation ("McDonald's") hereby answers the allegations of Plaintiff Kytch, Inc. ("Kytch"), contained in Kytch's Complaint, as follows:

**PRELIMINARY STATEMENT**

In its Complaint, Kytch has woven a sinister, yet false, story about McDonald's' alleged attempt to drive Kytch—which makes an aftermarket device that is used to purportedly help repair ice cream machines in some of McDonald's' franchise owner-operators' ("franchisees") restaurants—out of business. Kytch claims McDonald's destroyed its business by publishing false statements regarding potential safety issues with Kytch's device to McDonald's' franchisees in an edition of McDonald's' "Field Brief" weekly newsletter ("Field Brief"). Kytch further alleges McDonald's is part of a vast conspiracy to destroy Kytch's business out of a desire to protect an alleged "repair racket" run by one of McDonald's' soft serve ice cream machine suppliers—Taylor Company ("Taylor"). Kytch also claims McDonald's induced franchisee Tyler Gamble ("Gamble") and others to breach non-disclosure agreements by providing confidential information on its products—the Kytch Solution Device ("KSD") and Kytch Solution Platform (the "Kytch device")—and assisting Taylor affiliate Powerhouse Dynamics ("PHD") in developing a competing product called Open Kitchen. While all of this makes for great "clickbait" headlines, it is simply a work of fiction. As McDonald's will show in this case, there was no conspiracy to destroy Kytch's business, to protect Taylor's so-called repair racket, or to steal Kytch's information.

Instead, McDonald's acted at all times in the best interests of the McDonald's franchise system. McDonald's has worked hard to build a best-in-class franchising operation that delivers consistency across the meals it serves and services it provides, worldwide. To achieve this consistency, which is vital to the brand, McDonald's carefully evaluates any kitchen equipment that it approves for use in its restaurants. And as to any equipment used in McDonald's' restaurants, safety is paramount. Vendors must go through rigorous testing before becoming approved suppliers. The testing and approval process is meant to ensure the equipment used in McDonald's' restaurants will not harm users or compromise food safety, among other safety concerns.

1 As made clear throughout its Complaint, Kytch never undertook any efforts to meet  
2 McDonald's' testing requirements. Instead Kytch fancied itself a disruptor, following the Silicon  
3 Valley mantra of "move fast, break things" (an approach that does not sit well with McDonald's  
4 when it comes to safety). Kytch devised a risky business strategy of attempting to hack the  
5 McDonald's franchise system by marketing directly, and secretly to franchisees, in the hopes of  
6 presenting McDonald's with a *fait accompli*. In so doing, it bypassed all of McDonald's' testing  
7 and evaluation requirements.

8 McDonald's was justifiably concerned over this unknown product appearing in its system,  
9 and became even more so once Taylor informed McDonald's that it had identified serious safety  
10 risks inherent to Kytch's remote control features. The Field Brief's statements on Kytch's potential  
11 safety risks reflect McDonald's' good faith efforts to warn franchisees of serious potential risks  
12 arising from the KSD's apparent ability to remotely control Taylor's ice cream machines.

13 In contrast to Kytch, Taylor approached McDonald's directly with an IoT solution that it  
14 had been developing and offered to take it through the testing process. This process was delayed  
15 by the COVID-19 pandemic, and then by Summer, 2020, Taylor made the decision to shift  
16 strategies to configure PHD's preexisting Open Kitchen product.

17 PHD released Open Kitchen in Fall 2019. Open Kitchen is an IoT add-on device similar to  
18 Kytch's that is designed to bring connectivity to a broad array of kitchen equipment, not just the  
19 C602 ice cream machine. All one needs to do is configure Open Kitchen's software to be able to  
20 communicate with a given piece of equipment. McDonald's is informed and believes that Open  
21 Kitchen had, by 2020, already been integrated with numerous brands and models of kitchen  
22 equipment, and that number has only grown since then.

23 Using Taylor's information on the C602, PHD simply configured Open Kitchen to operate  
24 with Taylor's shake machines. Importantly, the version of Open Kitchen that McDonald's tested  
25 did not allow any remote operation of the C602 machine, meaning that McDonald's and Taylor's  
26 safety concerns with Kytch are inapplicable to Open Kitchen. *This* is the version of "Open Kitchen"  
27 that McDonald's referred to in the Field Brief as the "Taylor Shake Sundae Connectivity Solution"  
28 and that Kytch rails against throughout its Complaint. Open Kitchen is a PHD product. PHD

developed it, and with Taylor's help, configured it to interface with the C602. PHD manufactures the product. And when the product is released in the McDonald's system (a process McDonald's has unilaterally paused for business reasons unrelated to the fitness of the device), PHD is the only entity that will receive sales revenue. McDonald's' involvement in Open Kitchen was limited to product testing, evaluation, and ultimate approval within its system—just as it would be with any other vendor's products. And to McDonald's' knowledge, neither Taylor nor PHD relied on any Kytch confidential information or data to create the product.

### COMPLAINT<sup>1</sup>

Footnote 1: McDonald's lacks information and belief regarding Kytch's own conduct and the conduct of any third party in which McDonald's was not directly involved. For any allegations regarding McDonald's' conduct, McDonald's admits or denies the allegations as pleaded throughout this Answer.

1. McDonald's admits that McDonald's is known for its world-famous burgers and fries and admits that McDonald's' social media team posted the tweet in the screenshot, which speaks for itself. McDonald's denies the remaining allegations in Paragraph 1, including but not limited to Plaintiff's characterization of the tweet.

2. McDonald's admits that customers have complained about the ice cream machines at McDonald's' restaurants on social media and elsewhere, and that McDonald's' independent owner-operators are responsible for the repair and maintenance of the ice cream machines at their locations, just as they are for any other equipment that they own. Unless specifically admitted, McDonald's otherwise denies the allegations in this Paragraph.

3. McDonald's lacks information or belief sufficient to admit or deny the allegations in Paragraph 3 and on that basis denies those allegations.

4. McDonald denies the allegations.

5. McDonald denies the allegations. McDonald's further notes that there are hundreds

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<sup>1</sup> The headings in this Answer are Kytch's. McDonald's repeats Kytch's heading for convenience only. References in this Answer to "Paragraphs" are to paragraphs in Kytch's Complaint.

1 of corporate-owned locations in the U.S. alone and McDonald's pays the costs associated with  
2 repair and maintenance of ice cream machines at those locations.

3 6. McDonald denies the allegations.

4 7. McDonald's admits that Mr. O'Sullivan and Ms. Nelson founded Kytch and that the  
5 Kytch Solution is an IoT computer device that attaches to Taylor's C602 ice cream machines.  
6 McDonald's lacks information or belief sufficient to admit or deny the remaining allegations in  
7 Paragraph 7 and on that basis denies those allegations.

8 8. McDonald's lacks information or belief sufficient to admit or deny the allegations  
9 in Paragraph 8 and on that basis denies those allegations.

10 9. McDonald's admits that it has evaluated various IoT technologies, and began to  
11 explore the potential integration of such technologies with Taylor ice cream machines and other  
12 equipment since at least 2002. McDonald's further admits that one of these systems is a product  
13 called "Open Kitchen" developed and offered for sale by a Taylor affiliate and Middleby  
14 Corporation ("Middleby") subsidiary, PHD. McDonald's is informed and believes that Open  
15 Kitchen was a pre-existing product that PHD developed independently and released on the market  
16 in or around Fall, 2019. McDonald's is further informed and believes that Open Kitchen was itself  
17 derived from an even earlier PHD platform called SiteSage that was capable of, among other things,  
18 food safety monitoring and reporting, and has been on the market since at least 2015. McDonald's  
19 is informed and believes that Open Kitchen is an IoT add-on device, similar to Kytch, but it differs  
20 from Kytch in that Open Kitchen can be configured to interface with and provide IoT capabilities  
21 to many brands and models of kitchen equipment—not just Taylor's ice cream machines.  
22 McDonald's understands that PHD worked with Taylor to configure Open Kitchen's software to  
23 interface with Taylor's ice cream machines using Taylor's "data dictionary" for the C602 machine,  
24 and that the re-configured product is the version of Open Kitchen at issue in this case. McDonald's  
25 will henceforward use the phrase "Open Kitchen" to mean the version of Open Kitchen with  
26 software configured to interface with Taylor's C602 ice cream machines, and not Open Kitchen  
27 more generally. McDonald's admits that Open Kitchen has not been widely released to the  
28 McDonald's franchise system, but denies Kytch's explanation as to why. McDonald's has

MCDONALD'S CORPORATION'S

1 unilaterally opted to delay the release for business reasons unrelated to the readiness of the Open  
2 Kitchen product itself. McDonald's observes that Open Kitchen has been tested for almost two  
3 years in approximately 30 McDonald's restaurants. Unless specifically admitted, McDonald's  
4 denies the remaining allegations in this Paragraph.

5 10. McDonald's admits that Taylor proposed to test an IoT solution compatible with the  
6 C602 in September 2019 but denies that McDonald's "tabled Taylor's proposed solution as  
7 premature." McDonald's lacks information and belief sufficient to admit or deny the allegations  
8 in Paragraph 10 regarding a non-McDonald's document not attached to the Complaint and on that  
9 basis denies those allegations. Unless specifically admitted, McDonald's denies the remaining  
10 allegations in this Paragraph.

11 11. McDonald's denies that McDonald's was "angered" by positive coverage of Kytch  
12 and that McDonald's and Taylor "joined forces to drive Kytch out of the marketplace."  
13 McDonald's lacks information and belief sufficient to admit or deny the remaining allegations in  
14 this Paragraph, including the allegations regarding a non-McDonald's document not attached to the  
15 Complaint, and on that basis denies those allegations.

16 12. McDonald denies the allegations.

17 13. McDonald's admits that McDonald's and Taylor held biweekly meetings beginning  
18 in November 2020 with Taylor, PHD, and operators participating in the Open Kitchen test to share  
19 feedback regarding the Open Kitchen test. McDonald's denies that those meetings were "devoted  
20 to copying Kytch's technology." McDonald's admits that Gamble was a Kytch trial participant but  
21 lacks information and belief regarding whether any other Open Kitchen test participants were Kytch  
22 Trial participants. McDonald's lacks information and belief sufficient to admit or deny the  
23 allegations in Paragraph 13 regarding non-McDonald's documents not attached to the Complaint  
24 and the actions of Taylor and on that basis denies those allegations. Unless specifically admitted,  
25 McDonald's denies the remaining allegations in this Paragraph.

26 14. McDonald's admits that McDonald's Director of Global Equipment, Mike Zagorski  
27 and Taylor employee Jim Minard participated in a WebEx conference on June 23, 2020. Gamble,  
28 who also participated in the WebEx, is the only person that accessed a Kytch online interface during

1 that video conference. Unless specifically admitted, McDonald's denies the remaining allegations  
2 in this Paragraph.

3 15. McDonald's denies any allegations in Paragraph 15 regarding McDonald's.  
4 McDonald's lacks information and belief sufficient to admit or deny the allegations in Paragraph  
5 15 regarding TFG, Gamble, and Taylor and on that basis denies those allegations.

6 16. McDonald's admits that Open Kitchen was not ready to be broadly distributed  
7 within the McDonald's franchise system as of October 2020. Unless specifically admitted,  
8 McDonald's denies the remaining allegations in this Paragraph.

9 17. McDonald's admits that Gamble endorsed Kytch at the October 8, 2020 National  
10 Owners Association ("NOA") conference. McDonald's lacks information and belief as to whether  
11 that endorsement was made on behalf of the broader NOA, and therefore on that basis denies that  
12 allegation. Unless specifically admitted, McDonald's denies the remaining allegations in this  
13 Paragraph.

14 18. McDonald's admits that McDonald's communicated with Taylor after the October  
15 8, 2020 NOA conference but denies the allegation to the extent Kytch alleges an in-person meeting  
16 occurred. McDonald's lacks information and belief sufficient to admit or deny the allegations in  
17 Paragraph 18 regarding non-McDonald's documents not attached to the Complaint and on that basis  
18 denies those allegations. Unless specifically admitted, McDonald's denies the remaining  
19 allegations in this Paragraph.

20 19. McDonald's admits that Mike Zagorski stated that "[t]hings need to go much faster"  
21 after the October 8, 2020 NOA conference. Unless specifically admitted, McDonald's denies the  
22 remaining allegations in this Paragraph.

23 20. McDonald's admits that the screenshot accurately reflects the contents of a  
24 November 3, 2020 communication to McDonald's Operators (the "Field Brief"), and that the  
25 screenshot speaks for itself. McDonald's denies Plaintiff's characterization of the Field Brief and  
26 any factual allegation beyond the contents of the Field Brief as reflected in the screenshot. Unless  
27 specifically admitted, McDonald's denies the remaining allegations in this Paragraph. McDonald's  
28 further denies the allegations in Paragraph 20 to the extent they contain legal arguments and



1 conclusions for which no response is required.

2 21. McDonald's admits that the screenshot in Paragraph 21 contains the quoted  
3 language. McDonald's lacks information and belief sufficient to admit or deny Kytch's allegations  
4 in Paragraph 21 regarding the origins, purpose, and characterization of the screenshot or the actions  
5 and beliefs of Taylor and on that basis denies those allegations. Unless specifically admitted,  
6 McDonald's denies the remaining allegations in this Paragraph.

7 22. McDonald's admits that Intertek is a company that specializes in product safety  
8 testing but lacks information and belief and on that basis denies the allegation as to whether Kytch  
9 was certified by Intertek for electrical safety (or any other aspect of safety). McDonald's further  
10 admits that Kytch has filed suit against Taylor, TFG, and Gamble in Alameda County Superior  
11 Court in Oakland, California (the "Alameda Litigation") as alleged in Footnote 2. McDonald's  
12 admits that Taylor employee James Minard submitted a declaration in the Alameda Litigation  
13 stating, "At no point in time has Taylor ever come into possession of a Kytch device." McDonald's  
14 admits that the Complaint in this litigation refers to emails that are part of the public record in the  
15 Alameda Litigation but lacks information and belief sufficient to admit or deny allegations  
16 regarding discovery in the Alameda Litigation and on that basis denies those allegations.  
17 McDonald's admits that a general manager of a corporate McDonald's restaurant location  
18 independently attempted to order Kytch devices for use in his own and two other corporate  
19 locations, but Kytch rejected his attempt because, on information and belief, Kytch wanted a  
20 binding agreement with the entire McDonald's organization and realized that the general manager  
21 could not execute such an agreement. McDonald's denies that these circumstances imputed  
22 knowledge to McDonald's of Kytch's purported NDAs. McDonald's lacks information and belief  
23 sufficient to admit or deny the allegations in Paragraph 22 regarding the actions of Taylor, the  
24 certifications applicable to Kytch, and Kytch's representations regarding its own knowledge or  
25 product and therefore denies those allegations. Unless specifically admitted, McDonald's denies  
26 the remaining allegations in this Paragraph. McDonald's further denies the allegations in Paragraph  
27 22 to the extent that it contains legal arguments and conclusions for which no response is required.

28 23. McDonald denies the allegations. To the extent Paragraph 23 contains legal



1 arguments and conclusions for which no response is required, the allegations are further denied.

2       24. McDonald's admits that Gamble sent a text message to a McDonald's employee,  
3 John Sulit, on October 27, 2020, that included, among other statements, the quoted language.  
4 McDonald's denies to the extent Paragraph 24 alleges or implies that Sulit reviewed the message,  
5 or would have understood its contents or that it originated from Kytch, or that the explanations in  
6 the text message demonstrate that McDonald's' statements in the Field Brief are false or  
7 misleading. McDonald's lacks information and belief sufficient to admit or deny the allegations in  
8 Paragraph 24 regarding the beliefs of Taylor and the actions of Gamble and on that basis denies  
9 those allegations. Unless specifically admitted, McDonald's denies the remaining allegations in  
10 this Paragraph. McDonald's further denies the allegations in Paragraph 24 to the extent that it  
11 contains legal arguments and conclusions for which no response is required.

12       25. McDonald's admits that Gamble sent the text message to a McDonald's employee,  
13 John Sulit, but denies that McDonald's reviewed it, or understood its contents or that it originated  
14 from Kytch, or that the content of the text message would have addressed McDonald's' concerns  
15 underlying the statements in the Field Brief. McDonald's further admits that McDonald's  
16 published the Field Brief to all McDonald's operators in the U.S. (not all of "North America")  
17 stating that Kytch posed "a potential very serious safety risk"; and that McDonald's announced that  
18 Open Kitchen would be released in Q1 2021. McDonald's denies these statements are false or  
19 misleading. McDonald's lacks information and belief sufficient to admit or deny the allegations  
20 regarding Taylor's knowledge, motivations, and actions and therefore denies those allegations.  
21 Unless specifically admitted, McDonald's denies the remaining allegations in this Paragraph.  
22 McDonald's further denies the allegations in Paragraph 25 to the extent they consist of legal  
23 arguments and conclusions for which no response is required.

24       26. McDonald denies the allegations. McDonald's further denies the allegations in  
25 Paragraph 26 to the extent that it contains legal arguments and conclusions for which no response  
26 is required.

27       27. McDonald denies the allegations.

28       28. McDonald denies the allegations. McDonald's denies that the Field Brief failed to

1 provide substantive information on Kytch's safety risks and potential equipment reliability issues.  
2 McDonald's further denies the allegations in Paragraph 28 to the extent that it contains legal  
3 arguments and conclusions for which no response is required. McDonald's lacks information and  
4 belief sufficient to admit or deny the allegations regarding Taylor's intent and conduct regarding  
5 its repair and maintenance business and on that basis denies those allegations.

6 29. McDonald's admits that Open Kitchen has not been released to the entire  
7 McDonald's franchise system but denies to the extent Paragraph 29 implies that that is because  
8 Open Kitchen is not ready for release. McDonald's has tested functioning versions of Open Kitchen  
9 in approximately 30 restaurants for almost two years and chose to delay the release of Open Kitchen  
10 for business reasons unrelated to the readiness of the product itself. McDonald's lacks information  
11 and belief sufficient to admit or deny the allegations in Paragraph 29 regarding Taylor and therefore  
12 denies those allegations. Unless specifically admitted, McDonald's denies the remaining  
13 allegations in this Paragraph. This includes, but is not limited to, any allegations that imply that  
14 Open Kitchen is a McDonald's product. To the extent Paragraph 29 contains legal arguments and  
15 conclusions for which no response is required, the allegations are further denied.

16 30. McDonald's lacks information and belief sufficient to admit or deny the allegations  
17 in Paragraph 30 and on that basis denies those allegations. McDonald's further denies the  
18 allegations in Paragraph 30 to the extent that it contains legal arguments and conclusions for which  
19 no response is required.

20 31. McDonald's denies characterization of the Field Brief as a "false ad." McDonald's  
21 denies that there were any other "false ads" (plural). McDonald's lacks information and belief  
22 sufficient to admit or deny the remaining allegations in Paragraph 31 and on that basis those  
23 allegations. McDonald's further denies the allegations in Paragraph 31 to the extent that it contains  
24 legal arguments and conclusions for which no response is required.

25 32. McDonald's denies that McDonald's has engaged in anti-competitive conduct or  
26 that McDonald's has engaged in any other misconduct. McDonald's lacks information or belief  
27 sufficient to admit or deny the allegations in Paragraph 32 regarding Kytch's motivations and on  
28 that basis denies those allegations. McDonald's further denies the allegations in Paragraph 32 to

the extent that it contains legal arguments and conclusions for which no response is required.

## **PARTIES**

Response to “*Kytch’s Background.*”: This sub-heading contains no factual statement to admit or deny.

33. McDonald’s admits that Kytch, Inc. is a Delaware corporation, and otherwise denies the allegations in Paragraph 33. McDonald’s lacks information or belief sufficient to admit or deny the allegations in Paragraph 33 regarding Kytch’s mental state and on that basis denies those allegations. Unless specifically admitted, McDonald’s denies the remaining allegations in this Paragraph.

34. McDonald’s lacks information or belief sufficient to admit or deny the allegations in Paragraph 34 and on that basis denies those allegations.

35. McDonald’s lacks information or belief sufficient to admit or deny the allegations in Paragraph 35 and on that basis denies those allegations.

36. McDonald’s lacks information or belief sufficient to admit or deny the allegations in Paragraph 36 and on that basis denies those allegations.

37. McDonald’s lacks information or belief sufficient to admit or deny the allegations in Paragraph 37, including the allegations regarding non-McDonald’s documents not attached to the Complaint (i.e., the reports of “media outlets”), and on that basis denies those allegations.

38. McDonald’s lacks information or belief sufficient to admit or deny the allegations in Paragraph 38 and on that basis denies those allegations.

39. McDonald’s lacks information or belief sufficient to admit or deny the allegations in Paragraph 39 and on that basis denies those allegations.

40. McDonald’s lacks information or belief sufficient to admit or deny the allegations in Paragraph 40 and on that basis denies those allegations.

41. McDonald denies the allegations. McDonald’s further denies the allegations in Paragraph 41 to the extent that it contains legal arguments and conclusions for which no response is required.

Response to “*Background of McDonald’s and Its Co-Conspirators.*”: McDonald’s

1 denies that it is a conspirator or that it engaged in a conspiracy.

2 42. McDonald's admits that McDonald's Corporation is a Delaware corporation and  
3 that Mike Zagorski and John Sulit were and are employed by McDonald's. Unless specifically  
4 admitted, McDonald's denies the remaining allegations in this Paragraph. McDonald's further  
5 denies the allegations in Paragraph 42 to the extent that it contains legal arguments and conclusions  
6 for which no response is required.

7 43. McDonald's admits that Taylor is a Delaware limited liability company that  
8 manufactures soft-serve machines for sale to McDonald's and McDonald's operators. McDonald's  
9 further admits that Jeremy Dobrowolski was Taylor's CEO during the 2019-2021 time period and  
10 that Scott Nicholas and James Minard were employed by Taylor during the 2019-2021 time period.  
11 McDonald's lacks sufficient information to admit or deny the remaining allegations in Paragraph  
12 43 and on that basis denies them. McDonald's further denies the allegations in Paragraph 43 to the  
13 extent that it contains legal arguments and conclusions for which no response is required.

14 44. McDonald's lacks information or belief sufficient to admit or deny the allegations  
15 in Paragraph 44 and on that basis denies them. McDonald's further denies the allegations in  
16 Paragraph 44 to the extent that it contains legal arguments and conclusions for which no response  
17 is required.

18 45. McDonald's admits that Gamble is an independent McDonald's franchise owner  
19 that operates eight (not ten) McDonald's restaurants. McDonald's further admits that Gamble has  
20 served as the Equipment Team Lead for the National Supplier Leadership Council ("NSLC"),  
21 which is an advisory council comprised of independent McDonald's operators that liaise with  
22 McDonald's to provide operators' perspectives on issues related to the franchise system. The  
23 NSLC generally, and the equipment team specifically, have no decision-making authority within  
24 McDonald's and are not employees of McDonald's. Unless specifically admitted, McDonald's  
25 denies the remaining allegations in this Paragraph. McDonald's further denies the allegations in  
26 Paragraph 45 to the extent that it contains legal arguments and conclusions for which no response  
27 is required.

28 46. McDonald's admits that Gamble was a Kytch customer. McDonald's lacks

1 information or belief sufficient to admit or deny the remaining allegations in Paragraph 46 and on  
 2 that basis denies those allegations. McDonald's further denies the allegations in Paragraph 46 to  
 3 the extent that it contains legal arguments and conclusions for which no response is required.

4 47. Paragraph 47 and Footnote 5 contain legal conclusions regarding the legal effect of  
 5 a document for which no response is required. The allegations are therefore denied.

6 48. McDonald denies the allegations. McDonald's further denies the allegations in  
 7 Paragraph 48 to the extent that it contains legal arguments and conclusions for which no response  
 8 is required.

### 9 JURISDICTION & VENUE

10 49. McDonald denies the allegations that McDonald's engaged in a "coordinated effort  
 11 to destroy Kytch's business"; otherwise, McDonald's admits the remaining allegations regarding  
 12 subject matter and supplemental jurisdiction.

13 50. McDonald's admits the allegations in this Paragraph. Per the April 24, 2023  
 14 Stipulation and Order to Transfer Under 18 U.S.C. § 1404(A) in the United States District Court  
 15 for the District of Delaware, the parties agreed to transfer this case to the United States District  
 16 Court for the Northern District of California, Oakland Division. Moreover, McDonald's consented  
 17 to personal jurisdiction in the Northern District of California for purposes of adjudicating the claims  
 18 asserted by Kytch in this action.

19 51. McDonald's admits that venue is proper and McDonald's is incorporated in  
 20 Delaware. Per the April 24, 2023 Stipulation and Order to Transfer Under 18 U.S.C. § 1404(A) in  
 21 the United States District Court for the District of Delaware, the parties agreed to transfer this action  
 22 to the United States District Court for the Northern District of California, Oakland Division and  
 23 therefore agree that venue in this Court is proper.

### 24 FACTUAL ALLEGATIONS

25 Response to "*McDonald's Ice Cream Machines Are Notorious for Frequently Breaking*  
 26 *Down.*": McDonald's denies the characterization in this sub-heading and to the extent this sub-  
 27 heading contains factual allegations not within McDonald's knowledge, McDonald's lacks  
 28 sufficient information to admit or deny the allegations and on that basis denies them.

1           52. McDonald's admits the allegations in this Paragraph.

2           53. McDonald's admits that the Taylor C602 soft-serve machine is in most McDonald's  
3 restaurants but denies Kytch's characterization that Taylor machines are in "almost 100%" of  
4 McDonald's restaurants on the grounds that this statement is vague. McDonald's admits that the  
5 cited Wall Street Journal article exists and speaks for itself, but McDonald's denies Kytch's  
6 characterization of that document and its contents. McDonald's lacks information or belief  
7 sufficient to admit or deny the remaining allegations in Paragraph 53 and on that basis denies those  
8 allegations.

9           54. McDonald's admits that James Minard of Taylor tweeted "Fake News."  
10 McDonald's lacks information and belief sufficient to admit or deny the allegations regarding  
11 Taylor's knowledge, motivations, and actions and therefore denies any allegations related to  
12 Taylor. Unless specifically admitted, McDonald's denies the remaining allegations in this  
13 Paragraph.

14           55. McDonald's admits that a McDonald's spokesperson told Wired that McDonald's  
15 is "committed to doing better" and that McDonald's is, in fact, committed to improving its own  
16 performance on this and every other aspect of its business. Unless specifically admitted,  
17 McDonald's denies the remaining allegations in this Paragraph.

18           56. McDonald denies the allegations.

19           57. McDonald's admits that the cited Dateline article exists and speaks for itself, but  
20 McDonald's denies Kytch's characterization of that document and its contents. McDonald's lacks  
21 information and belief sufficient to admit or deny the remaining allegations in Paragraph 57  
22 regarding a non-McDonald's document not attached to the Complaint and on that basis denies those  
23 allegations. McDonald's further denies any implication that McDonald's restaurants serve unsafe  
24 food or fail to meet standards for safety or cleanliness.

25           58. McDonald's lacks information or belief sufficient to admit or deny the allegations  
26 in Paragraph 58 and on that basis denies those allegations. Further, the NBC News report  
27 referenced in Paragraph 57 stated, "All of the chains [including McDonald's] seem to have strong  
28 food safety systems in place." McDonald's does, in fact, have strong food safety systems in place.

1 To the extent any independent operators have found a way to bypass mandatory pasteurization and  
 2 brush cleaning on the C602 using manual override procedures intended for use by trained service  
 3 technicians for troubleshooting and repair, such actions are prohibited by McDonald's. Unless  
 4 specifically admitted, McDonald's denies the remaining allegations in this Paragraph.

5 59. McDonald denies the allegations.

6 60. McDonald denies the allegations.

7 61. McDonald's admits that there was an FTC investigation into "right to repair" issues  
 8 that, among other things, encompassed issues related to the ice cream machines used in  
 9 McDonald's restaurants. McDonald's admits that the cited Wall Street Journal article exists and  
 10 speaks for itself, but McDonald's denies Kytch's characterization of that document and its contents.  
 11 McDonald's lacks information and belief regarding the FTC's alleged efforts to contact  
 12 McDonald's franchise owners and on that basis denies those allegations. Unless specifically  
 13 admitted, McDonald's denies the remaining allegations in this Paragraph.

14 62. McDonald's admits that the cited Daily Show segment was broadcast and speaks  
 15 for itself, but McDonald's denies Kytch's characterization of that segment and its contents. Unless  
 16 specifically admitted, McDonald's denies the remaining allegations in this Paragraph.

17 63. McDonald's lacks information or belief sufficient to admit or deny the allegations  
 18 in Paragraph 63 and on that basis denies those allegations.

19 64. McDonald's lacks information or belief sufficient to admit or deny the allegations  
 20 in Paragraph 64 and on that basis denies those allegations.

21 65. McDonald's denies insofar as to the allegations that relate to McDonald's.  
 22 McDonald's lacks information or belief sufficient to admit or deny the remaining allegations in  
 23 Paragraph 65 as to Taylor or as to the contents of Mr. Fitzgerald's remarks and on that basis denies  
 24 those allegations.

25 Response to "*Kytch's Product Testing Reveals that Defects Were Built into the C602*  
 26 *Machines.*": McDonald's lacks information or belief sufficient to admit or deny the allegations  
 27 in this sub-heading and on that basis denies those allegations.

28 66. McDonald's lacks information or belief sufficient to admit or deny the allegations



1 in Paragraph 66 and on that basis denies those allegations.

2 67. McDonald's lacks information or belief sufficient to admit or deny the allegations  
3 in Paragraph 67 and on that basis denies those allegations.

4 68. McDonald's lacks information or belief sufficient to admit or deny the allegations  
5 in Paragraph 68 and on that basis denies those allegations.

6 69. McDonald's lacks information or belief sufficient to admit or deny the allegations  
7 in Paragraph 69 and on that basis denies those allegations.

8 70. McDonald's lacks information or belief sufficient to admit or deny the allegations  
9 in Paragraph 70 and on that basis denies those allegations.

10 71. McDonald's lacks information or belief sufficient to admit or deny the allegations  
11 in Paragraph 71 and on that basis denies those allegations.

12 72. McDonald's lacks information or belief sufficient to admit or deny the allegations  
13 in Paragraph 72 and on that basis denies those allegations.

14 73. McDonald's lacks information or belief sufficient to admit or deny the allegations  
15 in Paragraph 73 and on that basis denies those allegations.

16 74. McDonald's admits that the C602 machines have a restricted-access technicians'  
17 menu. It is McDonald's' understanding that this is a safety feature intended to prevent untrained  
18 users from inadvertently or purposefully changing machine settings that could negatively impact  
19 food safety, pose other physical safety hazards to individuals present in the restaurant in the vicinity  
20 of the machine, or cause damage to or reliability issues with the machine. It is McDonald's'  
21 understanding that Kytch enables users to bypass this safety feature, and that Kytch touts this  
22 capability as a benefit. McDonald's lacks information or belief sufficient to admit or deny the  
23 remaining allegations in Paragraph 74 and on that basis denies those allegations.

24 75. McDonald's lacks information or belief sufficient to admit or deny the allegations  
25 in Paragraph 75 and on that basis denies those allegations.

26 76. McDonald's lacks information or belief sufficient to admit or deny the allegations  
27 in Paragraph 76 and on that basis denies those allegations.

28 Response to "*Kytch's Innovative Technology and Confidential Information.*":

1 McDonald's lacks information or belief sufficient to admit or deny that Kytch has "innovative  
2 technology" or that Kytch has "confidential information" and on that basis denies those  
3 allegations.

4 77. McDonald's lacks information or belief sufficient to admit or deny the allegations  
5 in Paragraph 77 and on that basis denies those allegations.

6 78. McDonald's lacks information or belief sufficient to admit or deny the allegations  
7 in Paragraph 78 and on that basis denies those allegations.

8 79. McDonald's is informed and believes, and therefore admits, that Kytch allows its  
9 users to remotely monitor, control, and operate their machines. McDonald's lacks information or  
10 belief sufficient to admit or deny the remaining allegations in Paragraph 79 and on that basis denies  
11 those allegations. McDonald's further denies Paragraph 79 to the extent it contains legal arguments  
12 and conclusions for which no response is required.

13 80. McDonald's lacks information or belief sufficient to admit or deny the allegations  
14 in Paragraph 80 and on that basis denies those allegations.

15 81. McDonald's is informed and believes that the Kytch device allows a user to invite  
16 others to access the user's online account and on that basis admits the allegations in Paragraph 81.

17 82. McDonald's lacks information or belief sufficient to admit or deny the allegations  
18 in Paragraph 82 and on that basis denies those allegations.

19 83. McDonald's lacks information or belief sufficient to admit or deny the allegations  
20 in Paragraph 83 and on that basis denies those allegations.

21 Response to "***The Kytch Solution Is Safe and Certified by Intertek to Comply with FCC***  
22 ***Regulations and UL Standards.***": McDonald's denies that the Kytch Solution is safe.  
23 McDonald's lacks information and belief to admit or deny the remaining allegations in this sub-  
24 heading and on that basis denies those allegations.

25 84. McDonald's denies the allegations to the extent that it implies that Kytch created a  
26 "solution" or that Kytch improves the safety and reliability of soft-serve machines. McDonald's  
27 lacks information or belief sufficient to admit or deny the remaining allegations in Paragraph 84  
28 and on that basis denies those allegations.

1           85. McDonald's admits that certain Taylor materials state that Taylor has "gone to  
2 extreme efforts to design" safety features. McDonald's denies that the Kytch "complements and  
3 incorporates these safety efforts." Unless specifically admitted, McDonald's denies the remaining  
4 allegations in this Paragraph.

5           86. McDonald's admits this allegation. McDonald's is informed and believes that the  
6 freezer door is not the only area of the C602 machine where moving parts may be accessible to a  
7 person using, cleaning, or servicing the machine.

8           87. McDonald's admits that "rotating blades attached to the beaters scrape soft serve  
9 mix from the walls of the machine's cylinder as it freezes" and that the C602 employs a safety  
10 system to prevent injury when the freezer door is removed. It is McDonald's' understanding that  
11 the freezer door is not the only area of the C602 machine where moving parts may be accessible to  
12 a person using, cleaning, or servicing the machine. The C602 machine includes side panels and a  
13 back panel which, when removed, do not prompt a magnetic lock system. McDonald's lacks  
14 information or belief sufficient to admit or deny the remaining allegations in Paragraph 87 and on  
15 that basis denies those allegations.

16           88. McDonald's lacks information or belief sufficient to admit or deny the allegations  
17 in Paragraph 88 and on that basis denies those allegations.

18           89. McDonald's admits that the Taylor manual for the C602 states, "The main power  
19 supplies to the freezer must be disconnected prior to performing any repairs", and that the document  
20 speaks for itself. McDonald's denies Plaintiff's characterization of the manual and any factual  
21 allegation beyond the contents of the manual. McDonald's admits that it is standard in the industry  
22 to disconnect equipment from the main power supplies prior to performing any repairs.  
23 Notwithstanding this industry standard, human error may create situations where equipment is not  
24 disconnected from the main power supplies prior to performing repairs. McDonald's admits that  
25 the Kytch device cannot operate if the C602 machine is unplugged. Unless specifically admitted,  
26 McDonald's denies the remaining allegations in this Paragraph.

27           90. McDonald's denies that Kytch has made the C602 machines safer. McDonald's  
28 admits that "jumpers" can bypass certain safety mechanisms, and have, on a few isolated occasions,

1 been discovered in C602 machines located at restaurants of McDonald's operators. This is strictly  
2 prohibited by McDonald's, and Taylor has taken action to eradicate the practice. McDonald's lacks  
3 information or belief sufficient to admit or deny the remaining allegations in Paragraph 90 and on  
4 that basis denies those allegations. McDonald's further denies the allegations in Paragraph 90 to  
5 the extent they consist of legal arguments and conclusions to which no response is required.

6 91. McDonald's lacks information or belief sufficient to admit or deny the allegations  
7 in Paragraph 91 and on that basis denies those allegations.

8 92. McDonald's denies that Kytch "improves" the C602. McDonald's lacks  
9 information or belief sufficient to admit or deny the remaining allegations in Paragraph 92 and on  
10 that basis denies those allegations.

11 93. McDonald's admits that Intertek, an independent lab, tests and certifies products  
12 according to safety standards. McDonald's lacks information or belief sufficient to admit or deny  
13 the remaining allegations in Paragraph 93 and on that basis denies those allegations.

14 94. McDonald's lacks information or belief sufficient to admit or deny the allegations  
15 in Paragraph 94 and on that basis denies those allegations. McDonald's further denies the  
16 allegations in Paragraph 94 to the extent they consist of legal argument and conclusions for which  
17 no response is required.

18 95. McDonald's lacks information or belief sufficient to admit or deny the allegations  
19 in Paragraph 95 and on that basis denies those allegations. McDonald's further denies the  
20 allegations in Paragraph 95 to the extent they consist of legal argument and conclusions for which  
21 no response is required. McDonald's further observes that nothing in the tests Kytch describes  
22 suggests Intertek evaluated the safety of how Kytch interacts with and physically manipulates the  
23 C602.

24 96. McDonald's lacks information related to the Intertek report, which was not attached  
25 as an exhibit to the Complaint, and therefore denies the allegations related to its content, including  
26 the allegations in Footnote 11 regarding the definitions of terms purportedly used in the Intertek  
27 report. McDonald's further observes that nothing in the tests Kytch describes suggests Intertek  
28 evaluated the safety of how Kytch interacts with and physically manipulates the C602.

1           97. McDonald's lacks information or belief sufficient to admit or deny the allegations  
2 in Paragraph 97 and on that basis denies those allegations. McDonald's further observes that  
3 nothing in the tests Kytch describes suggests Intertek evaluated the safety of how Kytch interacts  
4 with and physically manipulates the C602.

5           98. McDonald's lacks information related to the quoted document, which was not  
6 attached as an exhibit to the Complaint, and therefore denies the allegations related to its content.  
7 McDonald's lacks information or belief sufficient to admit or deny the remaining allegations in  
8 Paragraph 98 and on that basis denies those allegations. McDonald's further observes that nothing  
9 in the tests Kytch describes suggests Intertek evaluated the safety of how Kytch interacts with and  
10 physically manipulates the C602.

11           99. McDonald's lacks information related to the quoted document, which was not  
12 attached as an exhibit to the Complaint, and therefore denies the allegations related to its content.  
13 McDonald's further observes that nothing in the tests Kytch describes suggests Intertek evaluated  
14 the safety of how Kytch interacts with and physically manipulates the C602.

15           100. McDonald's lacks information or belief sufficient to admit or deny the allegations  
16 in Paragraph 100 and on that basis denies those allegations.

17           101. McDonald's lacks information or belief sufficient to admit or deny the allegations  
18 in the first and third sentences of Paragraph 101 and on that basis denies those allegations.  
19 McDonald's denies the remaining allegations in Paragraph 101.

20           Response to "*NDAs and Other Security Measures Protect Kytch's Valuable Confidential*  
21 *Information.*": This sub-heading contains legal arguments and conclusions regarding the legal  
22 effect of NDAs for which no response is required. The allegations as to the purported NDAs are  
23 therefore denied. McDonald's lacks information or belief sufficient to admit or deny the remaining  
24 allegations in this sub-heading and on that basis denies those allegations.

25           102. McDonald's lacks information or belief sufficient to admit or deny the allegations  
26 in Paragraph 102 and on that basis denies those allegations.

27           103. McDonald's lacks information or belief sufficient to admit or deny the allegations  
28 in Paragraph 103 and on that basis denies those allegations. McDonald's further denies the

1 allegations in Paragraph 103 to the extent that it contains legal arguments and conclusions for which  
2 no response is required.

3 104. McDonald's lacks information or belief sufficient to admit or deny the allegations  
4 in Paragraph 104 and on that basis denies those allegations.

5 105. McDonald's lacks information or belief sufficient to admit or deny the allegations  
6 in the first sentence of Paragraph 105 and on that basis denies those allegations. The remainder of  
7 Paragraph 105 contains legal conclusions regarding the legal effect of a document for which no  
8 response is required. The allegations are therefore denied.

9 106. Paragraph 106 contains legal arguments and conclusions regarding the legal effect  
10 of a document for which no response is required. The allegations are therefore denied. To the  
11 extent this Paragraph makes factual allegations regarding the contents of a document, a purported  
12 copy of Kytch's Terms of Service was attached to Kytch's Complaint, and the document speaks  
13 for itself.

14 107. Paragraph 107 contains legal arguments and conclusions regarding the legal effect  
15 of a document for which no response is required. The allegations are therefore denied. To the  
16 extent this Paragraph makes factual allegations regarding the contents of a document, a purported  
17 copy of Kytch's NDA was attached to Kytch's Complaint, and the document speaks for itself.

18 108. Paragraph 108 contains legal arguments and conclusions regarding the legal effect  
19 of a document for which no response is required. The allegations are therefore denied. To the  
20 extent this Paragraph makes factual allegations regarding the contents of a document, a purported  
21 copy of Kytch's NDA was attached to Kytch's Complaint, and the document speaks for itself.

22 109. Paragraph 109 contains legal arguments and conclusions regarding the legal effect  
23 of a document for which no response is required. The allegations are therefore denied. To the  
24 extent this Paragraph makes factual allegations regarding the contents of a document, a purported  
25 copy of Kytch's NDA was attached to Kytch's Complaint, and the document speaks for itself.

26 110. McDonald's lacks information or belief sufficient to admit or deny the allegations  
27 in Paragraph 110 and on that basis denies those allegations. McDonald's further denies the  
28 allegations in this Paragraph to the extent it contains legal arguments and conclusions for which no

1 response is required.

2 111. McDonald's lacks information or belief sufficient to admit or deny the allegations  
3 in Paragraph 111 and on that basis denies those allegations. McDonald's further denies the  
4 allegations in this Paragraph to the extent it contains legal arguments and conclusions for which no  
5 response is required.

6 112. McDonald's lacks information or belief sufficient to admit or deny the allegations  
7 in Paragraph 112 and on that basis denies those allegations. McDonald's further denies the  
8 allegations in this Paragraph to the extent it contains legal arguments and conclusions for which no  
9 response is required.

10 113. McDonald's denies that Kytch's approach was novel or had "never been attempted."  
11 McDonald's lacks information or belief sufficient to admit or deny the remaining allegations in  
12 Paragraph 113 and on that basis denies those allegations. McDonald's further denies the allegations  
13 in this Paragraph to the extent it contains legal arguments and conclusions for which no response  
14 is required.

15 114. McDonald's denies the allegations. McDonald's further observes that Kytch's  
16 device was neither revolutionary nor even particularly novel, and that its potential benefits are  
17 vastly overstated.

18 115. McDonald's lacks information or belief sufficient to admit or deny the allegations  
19 in Paragraph 115 and on that basis denies those allegations.

20 Response to "*Taylor's Early Efforts to Intercept the Kytch Solution and to Access*  
21 *Kytch's Confidential Information.*": McDonald's lacks information or belief sufficient to admit  
22 or deny allegations in this sub-heading regarding Taylor and on that basis denies those  
23 allegations.

24 116. McDonald's lacks information or belief sufficient to admit or deny the allegations  
25 in Paragraph 116 and on that basis denies those allegations. McDonald's further denies the  
26 allegations in Paragraph 116 to the extent that it contains legal arguments and conclusions for which  
27 no response is required.

28 117. McDonald's admits that the cited article exists, contains the quoted text, and speaks



1 for itself. McDonald's denies Kytch's characterization of the document. McDonald's lacks  
2 information and belief sufficient to admit or deny the allegations in Paragraph 117 regarding PHD  
3 or Middleby and on that basis denies those allegations.

4 118. McDonald's lacks information or belief sufficient to admit or deny the allegations  
5 in Paragraph 118 and on that basis denies those allegations.

6 119. McDonald's lacks information or belief sufficient to admit or deny the allegations  
7 in Paragraph 119 and on that basis denies those allegations.

8 120. McDonald's lacks information or belief sufficient to admit or deny the allegations  
9 in Paragraph 120 and on that basis denies those allegations. McDonald's further denies the  
10 allegations in this Paragraph to the extent it contains legal arguments and conclusions for which no  
11 response is required.

12 121. McDonald's lacks information or belief sufficient to admit or deny the allegations  
13 in Paragraph 121 and on that basis denies those allegations.

14 122. McDonald's admits the screenshot in Paragraph 122 contains the quoted language.  
15 McDonald's lacks information or belief sufficient to admit or deny the allegations in Paragraph 122  
16 regarding a non-McDonald's document not attached to the Complaint and on that basis denies those  
17 allegations.

18 123. McDonald's admits the screenshot in Paragraph 123 contains the quoted language.  
19 McDonald's lacks information or belief sufficient to admit or deny the allegations in Paragraph  
20 123, including the allegations regarding a non-McDonald's document not attached to the  
21 Complaint, and on that basis denies those allegations.

22 124. McDonald's lacks information or belief sufficient to admit or deny the allegations  
23 in Paragraph 124 and on that basis denies those allegations.

24 125. McDonald's lacks information or belief sufficient to admit or deny the allegations  
25 in Paragraph 125 and on that basis denies those allegations.

26 126. McDonald's lacks information or belief sufficient to admit or deny the allegations  
27 in Paragraph 126, including the allegations regarding a non-McDonald's document not attached to  
28 the Complaint, and on that basis denies those allegations.

1           127. McDonald's lacks information or belief sufficient to admit or deny the allegations  
2 in Paragraph 127 and on that basis denies those allegations.

3           128. McDonald's lacks information or belief sufficient to admit or deny the allegations  
4 in Paragraph 128 and on that basis denies those allegations.

5           129. McDonald's lacks information or belief sufficient to admit or deny the allegations  
6 in Paragraph 129 and on that basis denies those allegations.

7           130. McDonald's lacks information or belief sufficient to admit or deny the allegations  
8 in Paragraph 130 and on that basis denies those allegations.

9           Response to "*The Kytch Trial Expands to McDonald's in Fall 2019 as McDonald's*  
10 *Rejects Taylor and PHD's Open Kitchen.*": McDonald's denies that McDonald's rejected Open  
11 Kitchen. McDonald's lacks information or belief sufficient to admit or deny the remaining  
12 allegations in this sub-heading and on that basis denies those allegations.

13           131. McDonald's denies the allegations. McDonald's was not even aware of Kytch's  
14 existence in Spring and Summer 2019. McDonald's lacks information or belief sufficient to admit  
15 or deny the remaining allegations in Paragraph 131 and on that basis denies those allegations.

16           132. McDonald's denies that it rejected Open Kitchen as premature to place into the  
17 McDonald's system. McDonald's lacks information or belief sufficient to admit or deny the  
18 remaining allegations in Paragraph 132 and on that basis denies those allegations.

19           133. McDonald's lacks information or belief sufficient to admit or deny the allegations  
20 in Paragraph 133 and on that basis denies those allegations.

21           134. McDonald's admits the allegations in Paragraph 134, except to the extent Kytch  
22 alleges that the NOA "controls" any other McDonald's franchisee organizations, organizations,  
23 which McDonald's denies.

24           135. McDonald's admits that one of the NSLC Equipment Team's priorities in 2020-  
25 2021 was to assist McDonald's and Taylor in improving the reliability of the C602 soft-serve  
26 machine through the "Shake Machine Reliability Project". McDonald's is unaware of any group  
27 called the "McFlurry Task Force." Unless specifically admitted, McDonald's denies the remaining  
28 allegations in this Paragraph.

136. McDonald's denies the allegations in Paragraph 136 that relate to McDonald's. McDonald's lacks information and belief sufficient to admit or deny the allegations in Paragraph 136 as to Taylor and on that basis denies those allegations.

Response to "***February 2020: After Reading News Reports of Kytch's Success, McDonald's Infiltrates Kytch's Product Trial to Misappropriate Confidential Information.***": McDonald's denies the allegations in this sub-heading.

137. McDonald's lacks information and belief sufficient to admit or deny the allegations in Paragraph 137 and on that basis denies those allegations.

138. McDonald's denies that Kytch was a "viable remedy" to perceived problems with the Taylor soft-serve machines. McDonald's further denies that there were widespread "problems" with the soft-serve machines used at McDonald's restaurants. McDonald's lacks information and belief sufficient to admit or deny the remaining allegations in Paragraph 138 and on that basis denies those allegations.

139. McDonald's lacks information and belief sufficient to admit or deny the allegations in Paragraph 139 regarding non-McDonald's documents not attached to the Complaint and on that basis denies those allegations.

140. McDonald's lacks information and belief sufficient to admit or deny the allegations in Paragraph 140 regarding non-McDonald's documents not attached to the Complaint and on that basis denies those allegations. McDonald's further denies that there were widespread "problems" with the soft-serve machines at McDonald's restaurants. McDonald's further denies the article's characterization of "unnecessary malfunctions" as applied to the soft-serve machines.

141. McDonald's admits that the February 12, 2020 "Daily Briefing" speaks for itself, but McDonald's denies Plaintiff's characterization of the briefing and any factual allegation beyond the contents of the briefing.

142. McDonald's denies the allegations related to McDonald's. McDonald's lacks information and belief sufficient to admit or deny the allegations in Paragraph 142 as to Taylor and PHD and on that basis denies those allegations.

143. McDonald's lacks information and belief sufficient to admit or deny the allegations

1 in Paragraph 143 regarding non-McDonald's documents not attached to the Complaint and on that  
2 basis denies those allegations.

3 144. McDonald's admits that Scott Nicholas scheduled a teleconference for February 13,  
4 2020 with the subject "Kytch, and Options for Data Collection for McDonald's Equipment" and  
5 that McDonald's employees Francois Blasini, John Sulit, and Mike Zagorski; two independent  
6 McDonald's franchise operators, Gamble and Eric Wilson (current and former NSLC equipment  
7 team leads, respectively); and certain Middleby representatives were invited. McDonald's lacks  
8 information and belief sufficient to admit or deny the allegations regarding the positions and  
9 seniority of Taylor and Middleby participants and on that basis denies those allegations. Unless  
10 specifically admitted, McDonald's denies the remaining allegations in this Paragraph. This  
11 includes, but is not limited to, Kytch's characterization of Blasini, Sulit, and Zagorski as "Senior  
12 Leadership."

13 145. McDonald's denies the allegations that relate to McDonald's. McDonald's lacks  
14 information and belief sufficient to admit or deny the allegations in Paragraph 145 as to Taylor and  
15 on that basis denies those allegations.

16 146. McDonald's denies the allegations.

17 147. McDonald's denies the allegations.

18 148. McDonald's denies the allegations.

19 149. McDonald's denies the allegations. Taylor sent McDonald's a PowerPoint  
20 presentation with what appear to be photographs of the Kytch device, but not until after the  
21 February 13, 2020 call, and it did not contain the quoted language. The quoted language in  
22 Paragraph 149 comes from a summary of the February 13, 2020 call prepared by Mike Zagorski  
23 after the call. McDonald's lacks information and belief sufficient to admit or deny that the  
24 photographs came from a South Carolina McDonald's franchise operator and on that basis denies  
25 that allegation.

26 150. McDonald's admits that Zagorski emailed Gamble and Wilson after the February  
27 13, 2020 call (not a meeting) and thanked them for their "willingness to start testing the Taylor  
28 solution." Unless specifically admitted, McDonald's denies the remaining allegations in this

1 Paragraph.

2 151. McDonald's lacks information and belief sufficient to admit or deny the allegations  
3 in Paragraph 151 and Footnote 14 regarding non-McDonald's documents not attached to the  
4 Complaint and on that basis denies those allegations.

5 152. McDonald's is informed and believes that Gamble had a telephone call with Kytch's  
6 founder, Jeremy O'Sullivan, on or about February 14, 2020, and to that extent admits the allegations  
7 in Paragraph 152. McDonald's denies that McDonald's urged Gamble to speak with Kytch.  
8 McDonald's lacks information and belief sufficient to admit or deny the remaining allegations in  
9 Paragraph 152 and on that basis denies those allegations.

10 153. McDonald's admits that Taylor COO James Minard wrote in an email to Zagorski,  
11 "Please let me know when you and your team have secured access to a Kytch unit and I will have  
12 my team available for a complete review." McDonald's denies that it had agreed to assist Taylor  
13 in securing access to a Kytch unit. McDonald's lacks information and belief sufficient to admit or  
14 deny the remaining allegations in Paragraph 153 and on that basis denies those allegations.

15 154. McDonald's denies that McDonald's was "offended" by Kytch's failure to approach  
16 McDonald's directly. McDonald's further denies any suggestion that McDonald's would  
17 "manufacture safety concerns" about Kytch or condone such actions. McDonald's lacks  
18 information and belief sufficient to admit or deny the remaining allegations in Paragraph 154 and  
19 on that basis denies those allegations.

20 155. McDonald's lacks information and belief sufficient to admit or deny the allegations  
21 in Paragraph 155 and on that basis denies those allegations.

22 156. McDonald's lacks information and belief sufficient to admit or deny the allegations  
23 in Paragraph 156 and on that basis denies those allegations.

24 Response to "***Gamble Shares Kytch's Confidential Information with McDonald's, TFG,***  
25 ***and Taylor.***": McDonald's admits that, on a few occasions, Gamble shared what appeared to be  
26 high-level notifications from the Kytch device with Mike Zagorski. McDonald's denies that  
27 Gamble shared any information confidential to Kytch with McDonald's. McDonald's lacks  
28 information and belief sufficient to admit or deny the remaining allegations in this sub-heading

1 and on that basis denies those allegations. McDonald's further denies the allegations in this sub-  
2 heading to the extent that it contains legal arguments and conclusions for which no response is  
3 required.

4 157. McDonald's admits that Gamble appears to have signed a contract with Kytch on  
5 March 19, 2020, which was attached to Kytch's Complaint. McDonald's lacks information and  
6 belief sufficient to admit or deny the remaining allegations in Paragraph 157 and on that basis  
7 denies those allegations. McDonald's further denies the allegations in Paragraph 157 to the extent  
8 that it contains legal arguments and conclusions for which no response is required.

9 158. To the extent this Paragraph makes factual allegations regarding the contents of a  
10 document, a purported copy of Kytch's Trial Agreement was attached to Kytch's Complaint, and  
11 the document speaks for itself. McDonald's lacks information and belief sufficient to admit or  
12 deny the allegations in Paragraph 158 and on that basis denies those allegations. McDonald's  
13 further denies the allegations in Paragraph 158 to the extent that it contains legal arguments and  
14 conclusions for which no response is required.

15 159. McDonald's admits that, on a few occasions, Gamble shared what appeared to be  
16 high-level notifications from the Kytch device with Mike Zagorski. McDonald's denies that  
17 Gamble shared any information confidential to Kytch with McDonald's. McDonald's lacks  
18 information and belief sufficient to admit or deny the remaining allegations in Paragraph 159 and  
19 on that basis denies those allegations. McDonald's further denies the allegations in Paragraph 159  
20 to the extent that it contains legal arguments and conclusions for which no response is required.

21 160. McDonald's lacks information and belief sufficient to admit or deny the allegations  
22 in Paragraph 160 regarding non-McDonald's documents not attached to the Complaint and on that  
23 basis denies those allegations. McDonald's further denies the allegations in Paragraph 160 to the  
24 extent that it contains legal arguments and conclusions for which no response is required.

25 161. McDonald's lacks information and belief sufficient to admit or deny the allegations  
26 in Paragraph 161 and on that basis denies those allegations. McDonald's further denies the  
27 allegations in Paragraph 161 to the extent that it contains legal arguments and conclusions for which  
28 no response is required.

1           162. McDonald's admits the screenshot in Paragraph 162 contains the quoted language.  
2 McDonald's lacks information and belief sufficient to admit or deny the allegations in Paragraph  
3 162 regarding the origins, meaning, and characterization of the document referenced therein.  
4 Unless specifically admitted, McDonald's denies the remaining allegations in this Paragraph.

5           163. McDonald's lacks information and belief sufficient to admit or deny the allegations  
6 in Paragraph 163 regarding non-McDonald's documents not attached to the Complaint and on that  
7 basis denies those allegations.

8           164. McDonald's lacks information and belief sufficient to admit or deny the allegations  
9 in Paragraph 164 and on that basis denies those allegations. McDonald's further denies the  
10 allegations in Paragraph 164 to the extent that it contains legal arguments and conclusions for which  
11 no response is required.

12           165. McDonald's lacks information and belief sufficient to admit or deny the allegations  
13 in Paragraph 165 and on that basis denies those allegations. In particular, McDonald's cannot admit  
14 or deny the length of time, amount of money, or the size of a trial program required to recreate the  
15 alleged confidential data because Kytch has not identified this data to McDonald's. McDonald's  
16 further denies the allegations in Paragraph 165 to the extent that it contains legal arguments and  
17 conclusions for which no response is required.

18           166. McDonald's lacks information and belief sufficient to admit or deny the allegations  
19 in Paragraph 166 and on that basis denies those allegations.

20           167. McDonald's lacks information and belief sufficient to admit or deny the allegations  
21 in Paragraph 167 and on that basis denies those allegations. McDonald's further denies the  
22 allegations in Paragraph 167 to the extent that it contains legal arguments and conclusions for which  
23 no response is required.

24           168. McDonald's lacks information and belief sufficient to admit or deny the allegations  
25 in Paragraph 168 regarding non-McDonald's documents not attached to the Complaint and on that  
26 basis denies those allegations.

27           169. McDonald's lacks information and belief sufficient to admit or deny the allegations  
28 in Paragraph 169 and on that basis denies those allegations.



1 Response to “*Throughout 2020, Gamble Continues to Share Kytch’s Confidential*  
 2 *Information with McDonald’s and Taylor.*”: McDonald’s admits that Gamble shared high-level  
 3 information on Kytch’s rewind feature in June 2020 and displayed Kytch’s online user interface  
 4 with Zagorski and Taylor representatives during a video conference on June 23, 2020.  
 5 McDonald’s denies that any of this information was “confidential” to Kytch. McDonald’s lacks  
 6 information and belief sufficient to admit or deny the allegations in this sub-heading as to Taylor  
 7 and on that basis denies those allegations.

8 170. McDonald’s admits that Gamble shared high-level information on Kytch’s rewind  
 9 feature in June 2020 and displayed Kytch’s online user interface with Zagorski and Taylor  
 10 representatives during a video conference on June 23, 2020. McDonald’s denies that any of this  
 11 information was “confidential” to Kytch. McDonald’s denies the allegations in Paragraph 170 to  
 12 the extent they relate to McDonald’s. McDonald’s lacks information and belief sufficient to admit  
 13 or deny the allegations in Paragraph 170 as to the actions of Gamble and Taylor and on that basis  
 14 denies those allegations. Unless specifically admitted, McDonald’s denies the remaining  
 15 allegations in this Paragraph.

16 171. McDonald’s lacks information and belief sufficient to admit or deny the allegations  
 17 in Paragraph 171 and on that basis denies those allegations.

18 172. McDonald’s admits that Gamble occasionally shared high-level information with  
 19 McDonald’s on the Kytch device, as described in Paragraphs 159 and 170, above. McDonald’s  
 20 denies that any of that information was “confidential” to Kytch. McDonald’s lacks information  
 21 and belief sufficient to admit or deny the allegations regarding Gamble’s alleged admissions in  
 22 Paragraph 172 and on that basis denies those allegations. McDonald’s further denies the allegations  
 23 in Paragraph 172 to the extent that it contains legal arguments and conclusions for which no  
 24 response is required.

25 173. McDonald’s admits the allegations in this Paragraph.

26 174. McDonald’s denies that John Sulit was invited; otherwise admitted.

27 175. McDonald’s admits that Gamble shared his thoughts about Kytch during the June  
 28 23, 2020 and displayed Kytch’s web interface during the Web Ex video conference. McDonald’s

1 denies that Gamble shared any information that could be considered confidential or proprietary to  
2 Kytech. McDonald's lacks information and belief sufficient to admit or deny the allegations in the  
3 third sentence of Paragraph 175 and on that basis denies those allegations. Unless specifically  
4 admitted, McDonald's denies the remaining allegations in this Paragraph. McDonald's further  
5 denies the allegations in Paragraph 175 to the extent that it contains legal arguments and  
6 conclusions for which no response is required.

7 176. McDonald's lacks information and belief sufficient to admit or deny the allegations  
8 in Paragraph 176 and on that basis denies those allegations.

9 177. McDonald's lacks information and belief sufficient to admit or deny the allegations  
10 in Paragraph 177 and on that basis denies those allegations.

11 178. McDonald's lacks information and belief sufficient to admit or deny the allegations  
12 in Paragraph 178 and on that basis denies those allegations.

13 179. McDonald's lacks information and belief sufficient to admit or deny the allegations  
14 in Paragraph 179 and on that basis denies those allegations.

15 180. McDonald's admits that John Sulit sent Gamble an email on October 27, 2020 that  
16 included, among other statements, the quoted language. Unless specifically admitted, McDonald's  
17 denies the remaining allegations in this Paragraph. McDonald's further denies the allegations in  
18 Paragraph 180 to the extent that it contains legal arguments and conclusions for which no response  
19 is required.

20 181. McDonald's admits that the screenshot in Paragraph 181 contains the quoted  
21 language. McDonald's denies that McDonald's "tried to ramp up product development" after the  
22 June 23, 2020 call and that Taylor's IoT device was McDonald's' product. McDonald's lacks  
23 information and belief sufficient to admit or deny the remaining allegations in Paragraph 181,  
24 including the allegations regarding a non-McDonald's document not attached to the Complaint,  
25 and on that basis denies those allegations.

26 182. McDonald's admits the screenshot in Paragraph 182 contains the quoted language.  
27 McDonald's lacks information and belief sufficient to admit or deny the remaining allegations in  
28 Paragraph 182 regarding a non-McDonald's document not attached to the Complaint and on that

1 basis denies those allegations.

2 Response to “*The Largest Group of Independent McDonald’s Franchise Operators*  
3 *Endorses Kytch in October 2020.*”: McDonald’s admits that Gamble endorsed Kytch at the  
4 October 8, 2020 NOA conference. Unless specifically admitted, McDonald’s denies the  
5 remaining allegations in this sub-heading.

6 183. McDonald’s denies any allegations in Paragraph 183 related to McDonald’s.  
7 McDonald’s lacks information and belief sufficient to admit or deny the remaining allegations in  
8 Paragraph 183 and on that basis denies those allegations. McDonald’s further denies the allegations  
9 in Paragraph 183 to the extent that it contains legal arguments and conclusions for which no  
10 response is required.

11 184. McDonald’s lacks information and belief sufficient to admit or deny the allegations  
12 in Paragraph 184 and on that basis denies those allegations.

13 185. McDonald’s admits that Gamble endorsed Kytch at the October 8, 2020 NOA  
14 conference. Unless specifically admitted, McDonald’s denies the remaining allegations in this  
15 Paragraph.

16 186. McDonald’s admits that Business Insider published an article entitled “McDonald’s  
17 franchisees are taking matters into their own hands to fix the chain’s notoriously broken soft-serve  
18 machines.” Unless specifically admitted, McDonald’s denies the remaining allegations in this  
19 Paragraph.

20 187. McDonald’s admits that the article contains the quoted language, except that the  
21 article states the device corrects for “human error.” McDonald’s denies Kytch’s characterization  
22 of the document.

23 188. McDonald’s admits that each text message is quoted accurately and speaks for itself,  
24 but McDonald’s denies Plaintiff’s characterization of the text messages and any factual allegation  
25 beyond the contents of the text messages. Unless specifically admitted, McDonald’s denies the  
26 remaining allegations in this Paragraph.

27 189. McDonald’s lacks information and belief sufficient to admit or deny the allegations  
28 in Paragraph 189 regarding a non-McDonald’s document not attached to the Complaint and on that

1 basis denies those allegations.

2 190. McDonald's denies that there was a "backlash" against McDonald's due to the  
3 McBroken.com website. McDonald's lacks information and belief sufficient to admit or deny the  
4 remaining allegations in Paragraph 190 regarding non-McDonald's documents not attached to the  
5 Complaint and on that basis denies those allegations.

6 Response to "***McDonald's Launches a False Advertising Campaign to Unlawfully***  
7 ***Compete Against Kytch.***": McDonald's denies the allegations. McDonald's further denies the  
8 allegations in this sub-heading to the extent that it contains legal arguments and conclusions for  
9 which no response is required.

10 191. McDonald's denies the allegations in Paragraph 191 as they relate to McDonald's.  
11 Further, McDonald's lacks information and belief sufficient to admit or deny the allegations as to  
12 Kytch and Taylor in Paragraph 191 and on that basis denies those allegations.

13 192. McDonald's denies that it had to or did create a "stall tactic." McDonald's lacks  
14 information and belief sufficient to admit or deny the allegations in Paragraph 192 as to Taylor or  
15 Kytch's purported rapid growth and on that basis denies those allegations.

16 193. McDonald's lacks information and belief sufficient to admit or deny the allegations  
17 in Paragraph 193 regarding a non-McDonald's document not attached to the Complaint and on that  
18 basis denies those allegations.

19 194. McDonald's lacks information and belief sufficient to admit or deny the allegations  
20 in Paragraph 194 regarding a non-McDonald's document not attached to the Complaint and on that  
21 basis denies those allegations.

22 195. McDonald's lacks information and belief sufficient to admit or deny the allegations  
23 in Paragraph 195 regarding a non-McDonald's document not attached to the Complaint and on that  
24 basis denies those allegations.

25 196. McDonald's denies the allegations in Paragraph 196 insofar as they relate to  
26 McDonald's. McDonald's lacks information and belief sufficient to admit or deny the allegations  
27 in Paragraph 196 regarding Kytch's alleged conversation with Gamble or Taylor's conduct and on  
28 that basis denies those allegations.

1            197. McDonald's admits that the screenshot speaks for itself and denies Kytch's  
2            characterization of the screenshot. Mr. O'Sullivan's purported explanation does not address  
3            McDonald's concerns regarding the risks it perceived from the Kytch device, which were not  
4            focused exclusively on electrical safety, the freezer door, or safety certifications. Moreover,  
5            Mr. O'Sullivan's explanation ignores the obvious fact that some employees or service technicians  
6            may not follow directives to power off and unplug the C602 machine before starting work. Unless  
7            specifically admitted, McDonald's denies the remaining allegations in this Paragraph.

8            198. McDonald's denies that Mr. O'Sullivan's purported explanations would have  
9            allayed McDonald's' concerns even if McDonald's had had notice of them. McDonald's lacks  
10           information and belief sufficient to admit or deny the allegations in Paragraph 198 regarding  
11           Mr. O'Sullivan and Mr. Gamble's purported correspondence and on that basis denies those  
12           allegations.

13           199. McDonald's denies the allegations in this Paragraph.

14           200. McDonald's denies the allegations in Paragraph 200 insofar as they relate to  
15           McDonald's. McDonald's lacks information and belief sufficient to admit or deny the allegations  
16           in Paragraph 200 as to Taylor and on that basis denies those allegations.

17           201. McDonald's denies the allegations as they relate to McDonald's. McDonald's  
18           denies that any independent operators contacted McDonald's "to try to sign up for the Kytch trial."  
19           McDonald's lacks information and belief sufficient to admit or deny the allegations in Paragraph  
20           201 as to Gamble and Taylor and on that basis denies those allegations. McDonald's lacks  
21           information and belief regarding the expectations of independent operators regarding the approval  
22           of the Kytch device and therefore denies those allegations.

23           202. McDonald's lacks information and belief sufficient to admit or deny the allegations  
24           in Paragraph 202 and on that basis denies those allegations.

25           203. McDonald's lacks information and belief sufficient to admit or deny the allegations  
26           in Paragraph 203 and on that basis denies those allegations. McDonald's also denies any  
27           implications that its concerns over Kytch's safety were not genuinely held.

28           204. McDonald's denies the allegations in Paragraph 204 to the extent they concern the

1 “motivations” of McDonald’s. McDonald’s lacks information and belief sufficient to admit or deny  
2 the remaining allegations in Paragraph 204 and on that basis denies those allegations.

3 205. McDonald’s admits that it sent an “Important Note” on Kytch’s safety risks in the  
4 Field Brief. Unless specifically admitted, McDonald’s denies the remaining allegations in this  
5 Paragraph. McDonald’s further denies the allegations in Paragraph 205 to the extent that it contains  
6 legal arguments and conclusions for which no response is required.

7 206. McDonald’s admits that it published the Field Brief, which speaks for itself.  
8 McDonald’s denies Plaintiff’s characterization of the Field Brief and any factual allegation beyond  
9 the contents of the Field Brief. Unless specifically admitted, McDonald’s denies the remaining  
10 allegations in this Paragraph and Footnote 16. McDonald’s further denies the allegations in  
11 Paragraph 206 and Footnote 16 to the extent that they contain legal arguments and conclusions for  
12 which no response is required.

13 207. McDonald’s admits that it published the Field Brief, which speaks for itself.  
14 McDonald’s denies Plaintiff’s characterization of the Field Brief and any factual allegation beyond  
15 the contents of the Field Brief. Unless specifically admitted, McDonald’s denies the remaining  
16 allegations in this Paragraph. McDonald’s further denies the allegations in Paragraph 207 to the  
17 extent that it contains legal arguments and conclusions for which no response is required.

18 208. McDonald’s denies that the Field Brief contains any actionable false or misleading  
19 statement of fact. The Field Brief speaks for itself. McDonald’s denies Plaintiff’s characterization  
20 of the Field Brief and any factual allegation beyond the contents of the Field Brief. McDonald’s  
21 lacks information and belief sufficient to admit or deny the allegations in Paragraph 208 as to  
22 Taylor’s internal records and on that basis denies those allegations. Unless specifically admitted,  
23 McDonald’s denies the remaining allegations in this Paragraph. McDonald’s further denies the  
24 allegations in Paragraph 208 to the extent that it contains legal arguments and conclusions for which  
25 no response is required.

26 209. McDonald’s denies the allegations in this Paragraph.

27 210. McDonald’s admits that McDonald’s sent the Field Brief to all U.S. McDonald’s  
28 restaurant operators. McDonald’s denies Plaintiff’s characterizations of the Field Brief including

1 that it was a false advertisement. McDonald's lacks information and belief sufficient to admit or  
2 deny the allegations in Paragraph 210 as to Taylor, Kytch, or Kytch's customers and on that basis  
3 denies those allegations. Unless specifically admitted, McDonald's denies the remaining  
4 allegations in this Paragraph. McDonald's further denies the allegations in Paragraph 210 to the  
5 extent that it contains legal arguments and conclusions for which no response is required.

6 211. McDonald's denies the allegations in Paragraph 211 to the extent they concern  
7 McDonald's. McDonald's lacks information and belief regarding who, if anyone, Taylor sent the  
8 Field Brief to and on that basis denies the allegations in Paragraph 211 on that topic. McDonald's  
9 further denies the allegations in Paragraph 211 to the extent that it contains legal arguments and  
10 conclusions for which no response is required.

11 212. McDonald's denies the allegations in Paragraph 212 to the extent they concern  
12 McDonald's, including the allegations that the Field Brief was baseless, a false advertisement, a  
13 stall tactic, or that it would mislead consumers. McDonald's lacks information and belief sufficient  
14 to admit or deny the allegations in Paragraph 212 as to Taylor and on that basis denies those  
15 allegations. McDonald's further denies the allegations in Paragraph 212 to the extent it contains  
16 legal arguments and conclusions for which no response is required.

17 213. McDonald's denies the allegations in Paragraph 213 to the extent they concern  
18 McDonald's. McDonald's specifically denies that the Field Brief contained false and misleading  
19 statements. McDonald's lacks information and belief sufficient to admit or deny the allegations in  
20 Paragraph 213 as to Taylor and on that basis denies those allegations. McDonald's further denies  
21 the allegations in Paragraph 213 to the extent it contains legal arguments and conclusions for which  
22 no response is required.

23 214. McDonald's denies the allegations. McDonald's specifically denies that the Field  
24 Brief contained false and misleading statements. McDonald's further denies the allegations in  
25 Paragraph 214 to the extent it contains legal arguments and conclusions for which no response is  
26 required.

27 215. McDonald's denies the allegations. McDonald's specifically denies that the Field  
28 Brief contained false and misleading statements. McDonald's further denies the allegations in



1 Paragraph 215 to the extent it contains legal arguments and conclusions for which no response is  
2 required.

3 216. McDonald's denies the allegations. McDonald's specifically denies that the Field  
4 Brief contained false and misleading statements. McDonald's further denies the allegations in  
5 Paragraph 216 to the extent it contains legal arguments and conclusions for which no response is  
6 required.

7 217. McDonald's denies the allegations alleged against McDonald's. McDonald's  
8 specifically denies that the Field Brief contained false and misleading statements. McDonald's  
9 lacks information and belief as to Taylor's knowledge of the Kytch device and on that basis denies  
10 any allegations in this Paragraph related thereto. McDonald's further denies the allegations in  
11 Paragraph 217 to the extent it contains legal arguments and conclusions for which no response is  
12 required.

13 218. McDonald's denies the allegations. McDonald's further denies the allegations in  
14 Paragraph 218 to the extent that it contains legal arguments and conclusions for which no response  
15 is required.

16 219. McDonald's denies the allegations. McDonald's further denies the allegations in  
17 Paragraph 219 to the extent that it contains legal arguments and conclusions for which no response  
18 is required.

19 220. McDonald's denies the allegations. To the extent Paragraph 220 contains legal  
20 arguments and conclusions for which no response is required, the allegations are further denied.

21 221. McDonald's denies the allegations. To the extent Paragraph 221 contains legal  
22 arguments and conclusions for which no response is required, the allegations are further denied.

23 222. McDonald's denies the allegations. To the extent Paragraph 222 contains legal  
24 arguments and conclusions for which no response is required, the allegations are further denied.

25 223. McDonald's denies Plaintiff's characterization that the Field Brief was a false  
26 advertisement. McDonald's lacks information and belief sufficient to admit or deny the remaining  
27 allegations in Paragraph 223 and on that basis denies those allegations. McDonald's further denies  
28 the allegations in Paragraph 223 to the extent that it contains legal arguments and conclusions for

MCDONALD'S CORPORATION'S

1 which no response is required.

2 224. McDonald's denies Plaintiff's characterization that the Field Brief was a false  
3 advertisement. McDonald's lacks information and belief sufficient to admit or deny the remaining  
4 allegations in Paragraph 224 and on that basis denies those allegations. McDonald's further denies  
5 the allegations in Paragraph 224 to the extent that it contains legal arguments and conclusions for  
6 which no response is required.

7 Response to "*After Urging Consumers to Boycott Kytch, McDonald's Directed Gamble*  
8 *and Others to Continue to Use the KSD to Help Taylor Incorporate Kytch's Technology into*  
9 *Open Kitchen.*": McDonald's denies the allegations.

10 225. McDonald's denies the allegations. McDonald's specifically denies Plaintiff's  
11 characterization that the Field Brief was an advertisement. To the extent Paragraph 225 contains  
12 legal arguments and conclusions for which no response is required, the allegations are further  
13 denied.

14 226. McDonald's denies the allegations.

15 227. McDonald's denies the allegations.

16 228. McDonald's admits that Gamble, Wilson, Balducci, and others attended bi-weekly  
17 focus groups on Open Kitchen. McDonald's lacks information and belief sufficient to admit or  
18 deny the contents of meeting minutes that were not attached to the Complaint. McDonald's denies  
19 any allegations stating or implying that Open Kitchen is McDonald's' product. Unless specifically  
20 admitted, McDonald's denies the remaining allegations in this Paragraph.

21 229. McDonald's denies the allegations.

22 230. McDonald's denies the allegations.

23 231. McDonald's lacks information and belief sufficient to admit or deny the allegations  
24 in this Paragraph and on that basis denies them.

25 232. McDonald's lacks information and belief sufficient to admit or deny the allegations  
26 in Paragraph 232, including allegations regarding non-McDonald's documents not attached to the  
27 Complaint, and on that basis denies those allegations. McDonald's further denies Kytch's  
28 characterizations of the screenshots of the animated "device functions," including but not limited

1 to Kytch's characterization of the PHD and Kytch screenshots as "identical." The screenshots  
2 speak for themselves.

3 233. McDonald's lacks information and belief sufficient to admit or deny the allegations  
4 in Paragraph 233, including allegations regarding non-McDonald's documents not attached to the  
5 Complaint, or allegations regarding Kytch's features and benefits, and on that basis denies those  
6 allegations. The screenshot speaks for itself.

7 234. McDonald's admits that Open Kitchen provides servings reports. Unless  
8 specifically admitted, McDonald's denies the remaining allegations in this Paragraph.

9 235. McDonald's admits that PHD provides certain real-time alerts. McDonald's further  
10 understands that Kytch and Open Kitchen may share overlap in terms of some alerts, but that is  
11 because both devices interface with the same C602 machines, pulling from the same limited set of  
12 data points, and reporting on the same kinds of events in the machine's operations. Earlier IoT  
13 devices that existed years before Kytch were set up to interface with the C602 and also had similar  
14 alerts. McDonald's lacks information and belief sufficient to ascertain the full suite of alerts and  
15 features available from Open Kitchen or Kytch, and thus cannot admit or deny the extent to which  
16 Open Kitchen and Kytch's features overlap. Therefore, McDonald's denies the allegations in  
17 Paragraph 235 to the extent they suggest there is perfect, or even a high degree of overlap.

18 236. McDonald's admits that the C602 lacks the ability to access the internet absent an  
19 add-on device. McDonald's lacks information and belief sufficient to admit or deny the remaining  
20 allegations in Paragraph 236 and on that basis denies those allegations.

21 237. McDonald's admits the allegation in Footnote 17 that Kytch filed Complaint in  
22 Alameda County Superior Court based on trade secret misappropriation, breach of contract, and  
23 tortious interference with contract against Taylor, Gamble, and TFG. McDonald's denies all other  
24 allegations in Paragraph 237 and Footnote 17.

25 Response to "*McDonald's, Taylor, and Middleby Have Repeatedly Misled Consumers*  
26 *with Empty Promises About the 'Imminent Release' of Workable IoT Solutions.*": McDonald's  
27 denies the allegations as to McDonald's. McDonald's observes that Open Kitchen has been  
28 tested for almost two years in approximately 30 McDonald's restaurants. McDonald's lacks

1 information and belief sufficient to admit or deny the allegations in this sub-heading as to Taylor  
2 and Middleby and on that basis denies those allegations.

3 238. McDonald's admits that McDonald's' Field Brief disclosed a target launch date of  
4 Q1 2021. Unless specifically admitted, McDonald's denies all other allegations in Paragraph 238.  
5 Further, McDonald's has unilaterally opted to delay the release for business reasons unrelated to  
6 the products readiness for market. McDonald's observes that Open Kitchen has been tested for  
7 almost two years in approximately 30 McDonald's restaurants.

8 239. McDonald's lacks information and belief sufficient to admit or deny the allegations  
9 in Paragraph 239, including allegations regarding non-McDonald's documents not attached to the  
10 Complaint, and on that basis denies those allegations.

11 240. McDonald's denies the allegations.

12 241. McDonald's admits that a Business Insider article appears to have been published  
13 that contains the quoted language. McDonald's denies that the quoted language is attributable to a  
14 McDonald's spokesperson. Unless specifically admitted, McDonald's denies the remaining  
15 allegations in this Paragraph.

16 242. McDonald's admits that the screenshots in Paragraph 242 contain some of the  
17 quoted language, but denies Kytch's characterization of the documents. McDonald's lacks  
18 information and belief sufficient to admit or deny the remaining allegations in Paragraph 242  
19 regarding the source and nature of the documents and on that basis denies those allegations.

20 243. McDonald's lacks information and belief sufficient to admit or deny the allegations  
21 in Paragraph 243 and on that basis denies those allegations.

22 244. McDonald's lacks information and belief sufficient to admit or deny the allegations  
23 in Paragraph 244, including allegations regarding non-McDonald's documents not attached to the  
24 Complaint, and on that basis denies those allegations.

25 245. McDonald's lacks information and belief sufficient to admit or deny the allegations  
26 in Paragraph 245, including allegations regarding non-McDonald's documents not attached to the  
27 Complaint or the authenticity of the screenshot, and on that basis denies those allegations.

28 246. McDonald's lacks information and belief sufficient to admit or deny the allegations

1 in Paragraph 246 and on that basis denies those allegations.

2 247. McDonald's lacks information and belief sufficient to admit or deny the allegations  
3 in Paragraph 247, including allegations regarding non-McDonald's documents not attached to the  
4 Complaint or the authenticity of the screenshot, and on that basis denies those allegations.

5 248. McDonald's lacks information and belief sufficient to admit or deny the allegations  
6 in Paragraph 248, including allegations regarding non-McDonald's documents not attached to the  
7 Complaint, and on that basis denies those allegations.

8 249. McDonald's lacks information and belief sufficient to admit or deny the allegations  
9 in Paragraph 249 and on that basis denies those allegations.

10 250. McDonald's lacks information and belief sufficient to admit or deny the allegations  
11 in Paragraph 250 and on that basis denies those allegations.

12 Response to "***McDonald's Published the False Advertisements with Reckless Disregard***  
13 ***for the Truth.***": McDonald's denies the allegations. McDonald's further denies the allegations  
14 in this sub-heading to the extent that it contains legal arguments and conclusions for which no  
15 response is required.

16 251. McDonald's denies the allegations. McDonald's further denies the allegations in  
17 Paragraph 251 to the extent that it contains legal arguments and conclusions for which no response  
18 is required.

19 252. McDonald's admits that Gamble messaged John Sulit about Kytch in October 2020,  
20 but McDonald's denies that Sulit actually reviewed the message, or that the message would have  
21 assuaged any of McDonald's safety concerns if it had been aware of it. McDonald's lacks  
22 information and belief sufficient to admit or deny the allegations in Paragraph 252 as to Taylor and  
23 on that basis denies those allegations. Unless specifically admitted, McDonald's denies the  
24 remaining allegations in this Paragraph. McDonald's further denies the allegations in Paragraph  
25 252 to the extent that it contains legal arguments and conclusions for which no response is required.

26 253. McDonald's denies the allegations in Paragraph 253 to the extent they relate to  
27 McDonald's. McDonald's lacks information and belief sufficient to admit or deny the allegations  
28 in Paragraph 253 as to Taylor's beliefs and actions and Kytch's competition and on that basis denies

1 those allegations. McDonald's further denies the allegations in Paragraph 253 to the extent that it  
2 contains legal arguments and conclusions for which no response is required.

3 254. McDonald's denies that McDonald's "intentionally avoided obvious sources of  
4 information that contradicted its statements"; otherwise admitted. McDonald's further denies the  
5 allegations in Paragraph 254 to the extent that it contains legal arguments and conclusions for which  
6 no response is required.

7 255. McDonald's admits that Gamble endorsed Kytch at the October 8, 2020 NOA  
8 conference. McDonald's admits that McDonald's knew that some franchise operators were  
9 involved in McDonald's' equipment evaluation efforts. Unless specifically admitted, McDonald's  
10 denies the remaining allegations in this Paragraph. McDonald's further denies the allegations in  
11 Paragraph 255 to the extent that it contains legal arguments and conclusions for which no response  
12 is required.

13 256. McDonald's denies the allegations. McDonald's further denies the allegations in  
14 Paragraph 256 to the extent that it contains legal arguments and conclusions for which no response  
15 is required.

16 257. McDonald's denies all allegations in Paragraph 257 regarding McDonald's.  
17 McDonald's lacks information and belief sufficient to admit or deny the allegations in Paragraph  
18 257 regarding Taylor's product and the beliefs and actions of Taylor and on that basis denies those  
19 allegations. McDonald's further denies the allegations in Paragraph 257 to the extent that it  
20 contains legal arguments and conclusions for which no response is required.

21 258. McDonald's denies the allegations.

22 259. McDonald's denies the allegations. McDonald's further denies the allegations in  
23 Paragraph 259 to the extent that it contains legal arguments and conclusions for which no response  
24 is required.

25 260. McDonald's denies the allegations in Paragraph 260 related to McDonald's.  
26 McDonald's lacks information and belief sufficient to admit or deny the allegations in Paragraph  
27 260 regarding Taylor's actions and on that basis denies those allegations. McDonald's further  
28 denies the allegations in Paragraph 260 to the extent that it contains legal arguments and

1 conclusions for which no response is required.

2 Response to “**McDonald’s and Taylor Doubled Down on Their False Claims Even After**  
 3 **Kytch Provided Formal Written Notice of the Facts.**”: McDonald’s admits that it has not  
 4 retracted the Field Brief. McDonald’s denies that it has made false and damaging accusations  
 5 that need to be retracted. McDonald’s lacks information and belief sufficient to admit or deny  
 6 this sub-heading as to Taylor and on that basis denies those allegations. Unless specifically  
 7 admitted, McDonald’s denies the remaining allegations in this sub-heading. McDonald’s further  
 8 denies the allegations in this sub-heading to the extent that it contains legal arguments and  
 9 conclusions for which no response is required.

10 261. McDonald’s denies the existence of any “false advertisement”. McDonald’s lacks  
 11 information and belief sufficient to admit or deny the allegations in Paragraph 261 regarding the  
 12 letter to Taylor and on that basis denies those allegations.

13 262. McDonald’s admits a copy of the letter is attached as Exhibit 2.

14 263. McDonald’s admits that Kytch sent the September 21, 2021 letter, which speaks for  
 15 itself, but McDonald’s denies Plaintiff’s characterization of the letter and any factual allegations  
 16 contained therein.

17 264. McDonald’s admits a copy of the letter is attached as Exhibit 3.

18 265. McDonald’s admits that it has not retracted the Field Brief. McDonald’s denies that  
 19 it has made false and damaging accusations that need to be retracted. McDonald’s lacks  
 20 information and belief sufficient to admit or deny the allegations in Paragraph 265 as to Taylor and  
 21 on that basis denies those allegations. Unless specifically admitted, McDonald’s denies the  
 22 remaining allegations in this Paragraph. McDonald’s further denies the allegations in Paragraph  
 23 265 to the extent that it contains legal arguments and conclusions for which no response is required.

24 Response to “**McDonald’s Tortious and Unlawful Conduct Destroyed Kytch’s**  
 25 **Business.**”: McDonald’s denies the allegations. McDonald’s further denies the allegations in this  
 26 sub-heading to the extent that it contains legal arguments and conclusions for which no response  
 27 is required. McDonald’s denies that its actions caused any cognizable injury to Kytch.

28 266. McDonald’s denies the allegations. McDonald’s further denies the allegations in



1 Paragraph 266 to the extent that it contains legal arguments and conclusions for which no response  
2 is required. McDonald's denies that its actions caused any cognizable injury to Kytch.

3 267. McDonald's denies the existence of any "advertisement," and that the Field Brief  
4 was false or unduly disparaging. McDonald's lacks information and belief sufficient to admit or  
5 deny the allegations in Paragraph 267 regarding Kytch's value or reputation and on that basis denies  
6 those allegations. McDonald's further denies the allegations in Paragraph 267 to the extent that it  
7 contains legal arguments and conclusions for which no response is required. McDonald's denies  
8 that its actions caused any cognizable injury to Kytch.

9 268. McDonald's lacks information and belief sufficient to admit or deny the allegations  
10 in Paragraph 268 and on that basis denies those allegations. McDonald's denies that its actions  
11 caused any cognizable injury to Kytch.

12 269. McDonald's lacks information and belief sufficient to admit or deny the allegations  
13 in Paragraph 269 and on that basis denies those allegations. McDonald's denies that its actions  
14 caused any cognizable injury to Kytch.

15 270. McDonald's lacks information and belief sufficient to admit or deny the allegations  
16 in Paragraph 270 and on that basis denies those allegations.

17 271. McDonald's lacks information and belief sufficient to admit or deny the allegations  
18 in Paragraph 271 and on that basis denies those allegations.

19 272. McDonald's lacks information and belief sufficient to admit or deny the allegations  
20 in Paragraph 272 and on that basis denies those allegations.

21 273. McDonald's denies that Kytch has innovative solutions or that those "solutions are  
22 now in McDonald's...hands." McDonald's lacks information and belief sufficient to admit or deny  
23 the remaining allegations in Paragraph 273 and on that basis denies those allegations. McDonald's  
24 denies that its actions caused any cognizable injury to Kytch.

25 274. McDonald's lacks information and belief sufficient to admit or deny the allegations  
26 in Paragraph 274 and on that basis denies those allegations. McDonald's denies that its actions  
27 caused any cognizable injury to Kytch.

28 275. McDonald's lacks information and belief sufficient to admit or deny the allegations

1 in Paragraph 275 and on that basis denies those allegations. McDonald's denies that its actions  
2 caused any cognizable injury to Kytch.

3 276. McDonald's lacks information and belief sufficient to admit or deny the allegations  
4 in Paragraph 276 and on that basis denies those allegations. McDonald's denies that its actions  
5 caused any cognizable injury to Kytch.

6 277. McDonald's lacks information and belief sufficient to admit or deny the allegations  
7 in Paragraph 277 and on that basis denies those allegations.

### 8 **CAUSES OF ACTION**

#### 9 **FIRST CAUSE OF ACTION**

##### 10 **Tortious Interference of Contract**

11 278. Paragraph 278 contains no factual statement to admit or deny. McDonald's also  
12 incorporates by reference each and every Paragraph above as if fully set forth herein.

13 279. McDonald's admits that there is an exhibit attached to the Complaint that purports  
14 to be a NDA between Gamble and Kytch. McDonald's lacks information and belief sufficient to  
15 admit or deny the remaining allegations in Paragraph 279 and on that basis denies those allegations.  
16 McDonald's further denies Paragraph 279 to the extent it contains legal arguments and conclusions  
17 regarding the authenticity, validity, or enforceability of the purported NDAs, for which no response  
18 is required.

19 280. Paragraph 280 contains legal conclusions regarding the legal effect of a document  
20 for which no response is required. The allegations are therefore denied.

21 281. Paragraph 281 contains legal conclusions regarding the legal effect of a document  
22 for which no response is required. The allegations are therefore denied.

23 282. McDonald's denies the allegations. McDonald's further denies the allegations in  
24 Paragraph 282 to the extent that it contains legal arguments and conclusions for which no response  
25 is required.

26 283. McDonald's denies the allegations. McDonald's further denies the allegations in  
27 Paragraph 283 to the extent that it contains legal arguments and conclusions for which no response  
28 is required.



1 in the Field Brief as false or an advertisement. McDonald's further denies the allegations in  
2 Paragraph 291 to the extent that it contains legal arguments and conclusions for which no response  
3 is required.

4 292. McDonald's denies the allegations. McDonald's further denies the allegations in  
5 Paragraph 292 to the extent that it contains legal arguments and conclusions for which no response  
6 is required.

7 293. McDonald's denies the allegations as to McDonald's. McDonald's lacks  
8 information and belief sufficient to admit or deny the remaining allegations in Paragraph 293 and  
9 on that basis denies those allegations. McDonald's further denies the allegations in Paragraph 293  
10 to the extent that it contains legal arguments and conclusions for which no response is required.  
11 McDonald's denies that its actions caused any cognizable injury to Kytch.

12 294. McDonald's admits that the Field Brief contained statements about health and safety  
13 of the Kytch device. Unless specifically admitted, McDonald's denies all other allegations in  
14 Paragraph 294 (including but not limited to Kytch's claim that such statements were false).  
15 McDonald's further denies the allegations in Paragraph 294 to the extent that it contains legal  
16 arguments and conclusions for which no response is required.

17 295. McDonald's denies the allegations. McDonald's further denies the allegations in  
18 Paragraph 295 to the extent that it contains legal arguments and conclusions for which no response  
19 is required. McDonald's lacks information and belief sufficient to admit or deny the allegations in  
20 Paragraph 295 regarding the state of mind, motivations, and actions of Kytch customers and on that  
21 basis denies those allegations. McDonald's denies that its actions caused any cognizable injury to  
22 Kytch.

23 296. McDonald's denies the allegations. McDonald's further denies the allegations in  
24 Paragraph 296 to the extent that it contains legal arguments and conclusions for which no response  
25 is required. McDonald's denies that its actions caused any cognizable injury to Kytch.

26 297. McDonald's denies the allegations. McDonald's lacks information and belief  
27 sufficient to admit or deny the allegations in Paragraph 297 regarding the actions of unidentified  
28 "consumers" and "customers and prospective customers" of Kytch and on that basis denies those

1 allegations. McDonald's further denies the allegations in Paragraph 297 to the extent that it  
 2 contains legal arguments and conclusions for which no response is required. McDonald's denies  
 3 that its actions caused any cognizable injury to Kytch.

4 298. McDonald's denies the allegations. McDonald's lacks information and belief  
 5 sufficient to admit or deny the allegations in Paragraph 298 regarding the actions of unidentified  
 6 "consumers" and on that basis denies those allegations. McDonald's further denies the allegations  
 7 in this Paragraph to the extent it contains legal arguments and conclusions for which no response  
 8 is required. McDonald's denies that its actions caused any cognizable injury to Kytch.

9 299. Paragraph 299 consists solely of legal conclusions for which no response is required.  
 10 The allegations are therefore denied. McDonald's denies that its actions caused any cognizable  
 11 injury to Kytch.

### 12 **THIRD CAUSE OF ACTION**

#### 13 **False Advertising in Violation of Cal. Bus. & Prof. Code § 17500, et seq.**

14 300. Paragraph 300 contains no factual statement to admit or deny. McDonald's also  
 15 incorporates by reference each and every Paragraph above as if fully set forth herein.

16 301. McDonald's admits that the Field Brief was sent to recipients located in California.  
 17 Unless specifically admitted, McDonald's denies the remaining allegations in Paragraph 301.  
 18 McDonald's further denies the allegations in this Paragraph to the extent it contains legal arguments  
 19 and conclusions for which no response is required.

20 302. McDonald's denies the allegations. McDonald's further denies the allegations in  
 21 this Paragraph to the extent it contains legal arguments and conclusions for which no response is  
 22 required.

23 303. McDonald's denies the allegations. McDonald's further denies the allegations in  
 24 this Paragraph to the extent it contains legal arguments and conclusions for which no response is  
 25 required.

26 304. McDonald's denies the allegations. McDonald's further denies the allegations in  
 27 this Paragraph to the extent it contains legal arguments and conclusions for which no response is  
 28 required.

305. McDonald's denies that its actions caused any cognizable injury to Kytch. McDonald's lacks information and belief sufficient to admit or deny the allegations in Paragraph 298 related to Kytch's alleged lost revenue and on that basis denies those allegations. McDonald's further denies the allegations in this Paragraph to the extent it contains legal arguments and conclusions for which no response is required.

#### FOURTH CAUSE OF ACTION

## Trade Libel

306. Paragraph 306 contains no factual statement to admit or deny. McDonald's also incorporates by reference each and every Paragraph above as if fully set forth herein.

307. McDonald's admits that it prepared and transmitted the Field Brief to U.S. franchisees and that the Field Brief speaks for itself, but McDonald's denies Plaintiff's characterization of the Field Brief and any factual allegation beyond the contents of the Field Brief. Unless specifically admitted, McDonald's denies the remaining allegations in this Paragraph. McDonald's further denies the allegations in Paragraph 307 to the extent that it contains legal arguments and conclusions for which no response is required.

308. McDonald's denies the allegations.

309. McDonald's denies the allegations. McDonald's further denies the allegations in Paragraph 309 to the extent that it contains legal arguments and conclusions for which no response is required.

310. McDonald's denies the allegations. McDonald's further denies the allegations in Paragraph 310 to the extent that it contains legal arguments and conclusions for which no response is required.

311. McDonald's lacks information and belief sufficient to admit or deny the allegations in Paragraph 311 and on that basis denies those allegations. McDonald's denies that its actions caused any cognizable injury to Kytch.

312. McDonald's lacks information and belief sufficient to admit or deny the allegations in Paragraph 312 and on that basis denies those allegations. McDonald's denies that its actions caused any cognizable injury to Kytch.

1           313. McDonald's denies the allegations. McDonald's further denies the allegations in  
2 Paragraph 313 to the extent that it contains legal arguments and conclusions for which no response  
3 is required.

4           314. McDonald's lacks information and belief sufficient to admit or deny the allegations  
5 in Paragraph 314 and on that basis denies those allegations.

6           315. McDonald's denies the allegations in Paragraph 315, including but not limited to  
7 the allegation that McDonald's made a statement that "consumers are unable to view or control the  
8 Kytch solution" and that any of McDonald's Field Brief statements were literally false or even  
9 misleading. McDonald's admits that Kytch has a rewind feature, and enables remote control and  
10 automated operation of the Taylor C602 shake machines. McDonald's denies that these facts  
11 render McDonald's statements false or misleading. McDonald's further denies the allegations in  
12 Paragraph 315 to the extent that it contains legal arguments and conclusions for which no response  
13 is required.

14           316. McDonald's denies the allegations. McDonald's further denies the allegations in  
15 Paragraph 316 to the extent that it contains legal arguments and conclusions for which no response  
16 is required.

17           317. McDonald's denies the allegations in Paragraph 317 regarding McDonald's  
18 intentions, and denies that its actions caused any cognizable injury to Kytch. To the extent  
19 Paragraph 317 contains legal arguments and conclusions for which no response is required, the  
20 allegations are further denied.

21           318. McDonald's denies the allegations, except to the extent Paragraph 318 alleges that  
22 in February 2020 McDonald's had a conversation with Taylor, Middleby, Eric Wilson and Gamble  
23 to discuss Kytch. McDonald's expressly denies that there was any discussion of "infiltration" of  
24 the Kytch trial. McDonald's further denies that McDonald's intended to or did fabricate safety  
25 concerns to drive Kytch out of the market, that McDonald's made any false or misleading  
26 statements regarding Kytch, that McDonald's had actual (or any other) knowledge of such alleged  
27 falsity, and that Kytch "does not create any incremental risk in Taylor's soft-serve machines."  
28 McDonald's lacks information and belief sufficient to admit or deny Kytch's allegations about what



1 Gamble told Kytch and on that basis denies those allegations. Unless specifically admitted,  
2 McDonald's denies the remaining allegations in this Paragraph. To the extent Paragraph 318  
3 contains legal arguments and conclusions for which no response is required, the allegations are  
4 further denied.

5 319. McDonald's denies the allegations, except to the extent that Kytch alleges  
6 McDonald's published the Field Brief at a time later than Gamble's recommendation that  
7 franchisees use Kytch at the October 8, 2020 NOA conference, which is admitted. Unless  
8 specifically admitted, McDonald's denies the remaining allegations in this Paragraph. To the extent  
9 Paragraph 319 contains legal arguments and conclusions for which no response is required, the  
10 allegations are further denied.

11 320. McDonald's denies the allegations. McDonald's never reviewed any such message,  
12 nor would McDonald's have understood it to come from Kytch if it had. Nor would the contents  
13 of the text message have addressed McDonald's safety concerns. To the extent Paragraph 320  
14 contains legal arguments and conclusions for which no response is required, the allegations are  
15 further denied.

16 321. McDonald's admits that, on occasion in 2020, Gamble shared high-level  
17 information on the Kytch device, and that one text message appears to reflect information on the  
18 Kytch Rewind feature similar (if not identical) to information that Kytch has freely shared in its  
19 own marketing materials. McDonald's denies the allegation that McDonald's did not have  
20 legitimate concerns about safety. Indeed, McDonald's did have legitimate concerns about safety  
21 as reflected in the Field Brief. McDonald's lacks information and belief sufficient to admit or deny  
22 the allegations in Paragraph 321 regarding the actions of Taylor and on that basis denies those  
23 allegations. To the extent Paragraph 321 contains legal arguments and conclusions for which no  
24 response is required, the allegations are further denied. Unless specifically admitted, McDonald's  
25 denies the remaining allegations in this Paragraph.

26 322. McDonald's denies the allegations, except to the extent Kytch alleges McDonald's  
27 did not contact Kytch, which McDonald's admits. McDonald's denies that it was under any duty  
28 or obligation to do so. To the extent Paragraph 322 contains legal arguments and conclusions for

1 which no response is required, the allegations are further denied. Unless specifically admitted,  
2 McDonald's denies the remaining allegations in this Paragraph.

3 323. McDonald's admits Kytch sent the September 21, 2021 letter to McDonald's, and  
4 the letter speaks for itself. McDonald's lacks information and belief sufficient to admit or deny  
5 Kytch's allegations regarding its conversations or correspondence with Taylor.

6 324. McDonald's admits that it has not retracted the Field Brief. Unless specifically  
7 admitted, McDonald's denies the remaining allegations in Paragraph 324. McDonald's further  
8 denies the allegations in this Paragraph to the extent it contains legal arguments and conclusions  
9 for which no response is required.

10 325. McDonald's denies the allegations. McDonald's further denies the allegations in  
11 this Paragraph to the extent it contains legal arguments and conclusions for which no response is  
12 required.

13 326. McDonald's denies the allegations. McDonald's further denies the allegations in  
14 this Paragraph to the extent it contains legal arguments and conclusions for which no response is  
15 required. McDonald's denies that its actions caused any cognizable injury to Kytch.

## 16 **FIFTH CAUSE OF ACTION**

### 17 **Intentional Interference with Business Expectancy**

18 327. Paragraph 327 contains no factual statement to admit or deny. McDonald's also  
19 incorporates by reference each and every Paragraph above as if fully set forth herein.

20 328. McDonald's lacks information and belief sufficient to admit or deny Kytch's  
21 allegations and on that basis denies the allegations. McDonald's further denies on the grounds that  
22 Paragraph 328 contains legal arguments and conclusions for which no response is required.

23 329. McDonald's denies the allegations. McDonald's further denies on the grounds that  
24 Paragraph 329 contains legal arguments and conclusions for which no response is required.

25 330. McDonald's denies the allegations. McDonald's further denies on the grounds that  
26 Paragraph 330 contains legal arguments and conclusions for which no response is required.  
27 McDonald's denies that its actions caused any cognizable injury to Kytch.

28 331. McDonald's denies the allegations. McDonald's further denies on the grounds that

Paragraph 331 contains legal arguments and conclusions for which no response is required. McDonald's denies that its actions caused any cognizable injury to Kytch.

332. McDonald's denies the allegations. McDonald's denies that its actions caused any cognizable injury to Kytch.

333. McDonald's denies the allegations. McDonald's further denies on the grounds that Paragraph 333 contains legal arguments and conclusions for which no response is required.

334. McDonald's denies the allegations. McDonald's further denies on the grounds that Paragraph 334 contains legal arguments and conclusions for which no response is required. McDonald's denies that its actions caused any cognizable injury to Kytch.

335. McDonald's denies the allegations. McDonald's further denies on the grounds that Paragraph 335 contains legal arguments and conclusions for which no response is required. McDonald's denies that its actions caused any cognizable injury to Kytch.

336. McDonald's denies the allegations. McDonald's further denies on the grounds that Paragraph 336 contains legal arguments and conclusions for which no response is required. McDonald's denies that its actions caused any cognizable injury to Kytch.

## SIXTH CAUSE OF ACTION

### Negligent Interference with Business Expectancy

337. Paragraph 337 contains no factual statement to admit or deny. McDonald's also incorporates by reference each and every Paragraph above as if fully set forth herein.

338. Kytch's negligent interference with prospective economic advantage claim has been dismissed with prejudice; therefore, McDonald's is not required to admit or deny these allegations.

339. Kytch's negligent interference with prospective economic advantage claim has been dismissed with prejudice; therefore, McDonald's is not required to admit or deny these allegations.

340. Kytch's negligent interference with prospective economic advantage claim has been dismissed with prejudice; therefore, McDonald's is not required to admit or deny these allegations.

341. Kytch's negligent interference with prospective economic advantage claim has been dismissed with prejudice; therefore, McDonald's is not required to admit or deny these allegations.

342. Kytch's negligent interference with prospective economic advantage claim has been

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1 dismissed with prejudice; therefore, McDonald's is not required to admit or deny these allegations.

2 343. Kytch's negligent interference with prospective economic advantage claim has been  
3 dismissed with prejudice; therefore, McDonald's is not required to admit or deny these allegations.

4 344. Kytch's negligent interference with prospective economic advantage claim has been  
5 dismissed with prejudice; therefore, McDonald's is not required to admit or deny these allegations.

6 345. Kytch's negligent interference with prospective economic advantage claim has been  
7 dismissed with prejudice; therefore, McDonald's is not required to admit or deny these allegations.

8 346. Kytch's negligent interference with prospective economic advantage claim has been  
9 dismissed with prejudice; therefore, McDonald's is not required to admit or deny these allegations.

10 347. Kytch's negligent interference with prospective economic advantage claim has been  
11 dismissed with prejudice; therefore, McDonald's is not required to admit or deny these allegations.

## 12 SEVENTH CAUSE OF ACTION

### 13 Deceptive Trade Practices - Cal. Bus. & Prof. Code § 17200

14 348. Paragraph 348 contains no factual statement to admit or deny. McDonald's also  
15 incorporates by reference each and every Paragraph above as if fully set forth herein.

16 349. McDonald's denies the allegations. McDonald's further denies on the grounds that  
17 Paragraph 349 contains legal arguments and conclusions for which no response is required.

18 350. McDonald's denies the allegations. McDonald's further denies on the grounds that  
19 Paragraph 350 contains legal arguments and conclusions for which no response is required.

20 351. McDonald's denies the allegations. McDonald's further denies on the grounds that  
21 Paragraph 351 contains legal arguments and conclusions for which no response is required  
22 McDonald's denies that its actions caused any cognizable injury to Kytch.

23 352. McDonald's denies on the grounds that Paragraph 352 contains legal arguments and  
24 conclusions for which no response is required. McDonald's denies that its actions caused any  
25 cognizable injury to Kytch.

26 353. McDonald's denies the allegations. McDonald's further denies on the grounds that  
27 Paragraph 353 contains legal arguments and conclusions for which no response is required.  
28 McDonald's denies that its actions caused any cognizable injury to Kytch.

**PRAYER FOR RELIEF**

McDonald's denies that Kytch is entitled to any relief whatsoever. To the extent Kytch prays for relief that is available to it under its Negligent Interference with Business Expectancy claim but not under any of its other claims for relief, such demand is ineffective because the Court dismissed with prejudice Kytch's Negligent Interference with Business Expectancy claim on March 29, 2023.

**DEFENSES**

In addition to the above, McDonald's sets forth below its defenses. Each defense is asserted as to all claims for relief against McDonald's, except where otherwise noted. By setting forth these defenses, McDonald's does not concede that these are affirmative defenses and does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiff. Moreover, nothing stated herein is intended or shall be construed as an acknowledgment that any particular issue or subject matter necessarily is relevant to Plaintiff's allegations.

**FIRST DEFENSE**

**(Failure to State a Claim)**

Plaintiff's Complaint fails to state a claim upon which relief can be granted or state facts sufficient to constitute a cause of action against McDonald's.

**SECOND DEFENSE**

**(No Actual Injury)**

Plaintiff's claims are barred, in whole or in part, because it has suffered no injury in fact and therefore has suffered no damages for which McDonald's is liable.

**THIRD DEFENSE**

**(Free Speech)**

Plaintiff's claims are barred, in whole or in part, insofar as they challenge the exercise of rights protected by the California Constitution and the First Amendment of the Constitution of the United States. Plaintiffs' claims that rely upon the Field Brief are also barred, in whole or in part, because the Field Brief is not an "advertisement" and does not constitute commercial speech.

**FOURTH DEFENSE****(Statements Not in Commercial Advertising or Promotion)**

Any statements or representations claimed to have been made by McDonald's of and concerning Plaintiff are not actionable under 15 U.S.C.A. § 1125(a) because they were not in "commercial advertising or promotion" as those terms are defined under 15 U.S.C.A. § 1125(a) in that the statements or representations: (a) did not constitute commercial speech under 15 U.S.C.A. § 1125; and/or (b) were not motivated primarily by McDonald's' economic concerns.

**FIFTH DEFENSE****(Statements Not Made in Connection With Defendant's Goods/Services)**

Any statements claimed to have been made by McDonald's of and concerning Plaintiff are not actionable under 15 U.S.C.A. § 1125(a) because they were not made in connection with McDonald's' goods and/or services.

**SIXTH DEFENSE****(Truth)**

Plaintiff's claims are barred, in whole or in part, because the allegedly false and/or defamatory statements were true or substantially true.

**SEVENTH DEFENSE****(No Malice)**

Plaintiff's claims are barred, in whole or in part, because the allegedly false and/or defamatory statements were made without malice.

**EIGHTH DEFENSE****(Opinion)**

Plaintiff's claims against McDonald's are barred, in whole or in part, because the allegedly false and/or defamatory statements were opinion.

**NINTH DEFENSE****(Statutory Privilege)**

Plaintiff's claims against McDonald's are barred, in whole or in part, because the allegedly false and/or defamatory statements were privileged under California Civil Code Section 47(c).

**TENTH DEFENSE****(Privilege)**

Plaintiff's claims against McDonald's are barred, in whole or in part, because McDonald's had a privilege to protect its own interests, including its own economic interest.

**ELEVENTH DEFENSE****(Justification)**

Plaintiff's claims against McDonald's are barred, in whole or in part, because McDonald's had legitimate justifications for the conduct at issue.

**TWELFTH DEFENSE****(Preemption)**

Plaintiff's state law claims against McDonald's are barred, in whole or in part, by the California Uniform Trade Secrets Act.

**THIRTEENTH DEFENSE****(Conduct Permitted by Law)**

Plaintiff's claims against McDonald's are barred, in whole or in part, to the extent that McDonald's conduct was permitted by law.

**FOURTEENTH DEFENSE****(Failure to Mitigate)**

Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to mitigate its damages, if any. Kytch waited almost one year (until September 21, 2021) to contact McDonald's regarding the alleged false advertisement to request a retraction.

**FIFTEENTH DEFENSE****(Speculative or No Damages)**

Plaintiff's claims are barred, in whole or in part, because McDonald's not cause, directly or indirectly, the alleged damages complained of, and the alleged damages, if any, are speculative and impossible to ascertain.

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**SIXTEENTH DEFENSE****(Intervening or Superseding Cause)**

Plaintiff's claims are barred, in whole or in part, because the alleged damages, if any, were the result of one or more intervening or superseding causes or caused by the acts and/or omissions of persons other than McDonald's.

**SEVENTEENTH DEFENSE****(Unjust Enrichment)**

Plaintiff's claims against McDonald's are barred, in whole or in part, because it seeks a windfall that it is not otherwise entitled to recover.

**EIGHTEENTH DEFENSE****(Additional Defenses)**

Because Plaintiff's Complaint is often phrased in conclusory terms, McDonald's cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly, McDonald's has done its best to anticipate the possible affirmative defenses consistent with the requirements of Federal Rule of Civil Procedure 8(c). McDonald's reserves the right to assert additional defenses to the extent such defenses are or become applicable.

**DEMAND FOR JURY TRIAL**

McDonald's demands a trial by jury on all issues so triable.

Dated: May 5, 2023

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: 

CATHERINE Y. LUI  
Attorneys for Defendant  
McDonald's Corporation